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THE  
RULES OF PRACTICE  
AND PROCEDURE

OF THE

Supreme Court of Ontario

(IN CIVIL MATTERS)

1928

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Being the rules prepared and published in 1913, and the  
amendments from time to time made, consolidated and  
further amended by the Judges of the  
Supreme Court in 1928.



ONTARIO

TORONTO

Printed by the Printer to the King's Most Excellent Majesty

1928



3 GEORGE V, CHAPTER 19, SECTION 103.

"If and when the Rules of Practice and Procedure which are being prepared by the Honourable Mr. Justice Middleton, under instructions from the Attorney-General, are approved by the Lieutenant-Governor in Council, the same, and the tariffs of costs and the tariffs of fees payable to the Crown and to the officers of the Court contained therein shall on or from a day to be named by the Lieutenant-Governor in Council by proclamation have the same force and effect as if they had been embodied in this Act, and shall supersede the existing Rules and tariffs; and section 102 shall after that day no longer remain or be in force."

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Order-in-Council approved by His Honour the Lieutenant-Governor, the 11th day of July, A.D. 1913.

"Upon the recommendation of the Honourable the Attorney-General, the Committee of Council advise that the Rules of Practice and Procedure prepared by the Honourable Mr. Justice Middleton be approved by Your Honour and that the same be brought in force on the 1st day of September next as provided by section 103 of *The Judicature Act*, 3 George V, chapter 19."

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Section 108 of *The Judicature Act*, R.S.O. 1927, chapter 88, enacts:

"The Rules of Practice and Procedure including the tariffs of fees and costs proclaimed by the Lieutenant-Governor in Council under the authority of *The Judicature Act*, being chapter 19 of the Statutes of 1913, and all amendments made to such rules by the judges, are confirmed and declared to have the same force and effect as if they were embodied in this Act, but the judges may nevertheless from time to time pass rules repealing, amending or varying the same."

By resolution of the Judges of the Supreme Court of 26th October, 1928, this Consolidation and Amendment of the rules becomes effective on the 31st December, 1928.



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# Supreme Court of Ontario

## RULES OF PRACTICE

Revised and Amended, 1928

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### CHAPTER I.

#### INTERPRETATION

- 1.** All Rules and orders heretofore passed are rescinded, except those mentioned in the schedule hereto, and as to all matters not provided for in these Rules, the practice shall be regulated by analogy thereto.
- 2.** In these Rules,—
  - (a)** “Accountant” shall mean “The Accountant of the Supreme Court of Ontario.”
  - (b)** “Action” shall include garnishee proceedings and proceedings for relief by interpleader.
  - (c)** “County Court” shall include District Court, and “County” shall include “District.”
  - (d)** “Judge” shall mean a Judge of the High Court Division of the Supreme Court.
  - (e)** “Judgment creditor” shall mean the party or person who is entitled to receive payment or to enforce a judgment or order.
  - (f)** “Judgment debtor” shall mean the party or person to make payment under any judgment or order, or against whom the same may be enforced.
  - (g)** In Rules 533 to 599 “Judgment” shall include an order to the same effect.

- (h) "Sheriff" shall include any Coroner, Elisor or other officer charged with the execution of any writ or process.
- (i) "Time prescribed" shall mean time limited or appointed by the Rules or by any judgment or order.
- (j) In Rules 12 to 31 the words "Writ of Summons" and "Writ" shall include any document by which proceedings are commenced, and shall also include all proceedings by which a person not a party is added as a party either before or after judgment, e.g., proceedings in the Master's office and garnishee and third party proceedings.
- (k) "Writ of Execution" and "execution" shall include all writs by which a judgment may be enforced, and in the Rules relating to interpleader shall also include an order of attachment under *The Absconding Debtors' Act*.

**3.** The division of these Rules into chapters, titles, and headings is for convenience only, and shall not affect their construction.

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## CHAPTER II.

### FORM AND COMMENCEMENT OF PROCEEDINGS IN THE SUPREME COURT

#### (i) *Writ of Summons*

**4.** All actions shall be commenced by the issue of a writ of summons, tested in the name of the Chief Justice of Ontario, or in case the office of the Chief Justice of Ontario shall be vacant in the name of the Chief Justice of the High Court, which shall be prepared by the plaintiff, and shall contain the names of the parties and the characters in which they sue and are sued, and the office in which and the time within which the defendant is to enter his appearance, and shall be indorsed with a short statement of the nature of the plaintiff's claim.

**5.** Any claim on behalf of His Majesty, including a claim to repeal letters patent under the Great Seal, may be enforced by an action brought by the Attorney-General on behalf of His Majesty.

**6.** The proper officer shall, on receiving a copy of the writ to be filed with him, issue the writ by signing and sealing the same with his seal of office, and shall also note in the margin of the writ from what office and in what county it is issued, and shall subscribe his name thereto.

**7.** A writ for service in Ontario (either personally or in any other manner), shall be according to Form No. 1. A writ for service out of Ontario shall be according to Form No. 2. Where the defendant is not a British subject and is not in British Dominions, notice of the writ, according to Form No. 3, shall be served in lieu of the writ.

**8.** The plaintiff may issue a duplicate writ or concurrent writ for service either within or without Ontario, tested of the same day as the original writ, and marked "duplicate" or "concurrent," and with the date of actual issue. Such writs shall only be in force during the currency of the original writ.

**9.** The writ shall be in force for twelve months from the date thereof, including the day of such date; but if for any sufficient reason any defendant has not been served, the writ may at any time before its expiration, by order, be renewed for twelve months, and so from time to time during the currency of the renewed writ. The writ shall be marked by the proper officer, "renewed," with the date of the order.

(ii) *Originating Notice*

**10.** Every proceeding in the Court, other than an action or a proceeding that may be taken *ex parte*, shall, unless otherwise specially provided be commenced by a notice of motion called an originating notice.

**11.** When by any statute an application may be made to the Court or a Judge in a manner therein provided such application may also be made by originating notice, but any security required by such statute shall be given.

NOTE—*See also The Interpretation Act, R.S.O. 1927, c. 1, s. 30.*

(iii) *Indorsement of Address, Etc.*

**12.**—(1) Where a plaintiff sues by a solicitor, the writ of summons (or notice in lieu thereof), shall be indorsed with the solicitor's name or firm and place of business, where service may be made.

(2) Where the solicitor issuing a writ of summons is only agent of another solicitor, his name or firm and place of business as well as the name or firm and place of business of the principal solicitor shall be indorsed.

(3) Where a plaintiff sues in person, there shall be indorsed upon the writ or notice in lieu thereof, his place of residence and occupation.

(4) If the residence of a plaintiff suing in person is more than two miles from the office in which the proceedings are commenced, there shall also be indorsed an address for service within that distance. In default, any paper not requiring personal service may be served by mailing the same to the plaintiff at his address, by registered letter.

**13.**—(1) The solicitor whose name is indorsed on any writ of summons, shall on demand declare forthwith whether the cause or matter has been commenced by him or with his authority or privity. He shall also, if demanded, disclose the profession or occupation, and place of abode (giving name of street and house number where practicable) of the plaintiff. In default the action may be stayed and the solicitor may be directed to pay the costs.

(2) If the solicitor declares that the writ was not issued by him or with his authority or privity, an order may be obtained *ex parte* directing that all proceedings shall be stayed, and thereafter no further proceedings shall be taken without leave.

**14.**—(1) Where an action is brought in the name of a firm or in a name or style other than the plaintiff's own name, the plaintiffs shall, on demand, declare forthwith in writing the names and places of residence of all the persons constituting the firm, or carrying on business under such name or style.

(2) If the plaintiffs fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed.

(iv) *Service*

**15.** Service of a writ of summons shall not be required where the defendant by his solicitor accepts service, and undertakes to appear.

**16.** Save as hereinafter provided, in the absence of such acceptance of service every writ of summons shall be served personally, but if it appears that the plaintiff is unable to effect prompt personal service, substituted service, by advertisement or otherwise, may be ordered. Substituted service may also be allowed of any other document which requires personal service.

**17.**—(1) The person serving a writ of summons shall, within three days after the service, indorse on the writ the day of the month and week of the service thereof, and the date of the making of the indorsement, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default without leave, to be obtained at the sole cost of the plaintiff.

(2) Every affidavit of service of a writ of summons shall state the day on which such indorsement was made.

**18.**—(1) Where an infant is sued in respect of his interest in an estate, he shall be served by delivering a copy of the writ to the Official Guardian.

(2) The post office address of the father or guardian of such infant or of the person with whom or under whose care the infant is shall be indorsed on the copy of the writ so served.

(3) From the time of such service, the said Official Guardian shall be the guardian *ad litem* of the infant, unless and until otherwise ordered, and it shall be the duty of the said Official Guardian, or of any other guardian appointed for such infant, forthwith to attend to the interests of the infant, and to take all such proceedings as may be necessary for the protection of such interests in the proceeding in which he is appointed guardian, and for that purpose to communicate with all proper persons and parties, including the father or guardian of the infant and the person with whom or under whose care the infant is.

(4) In case there is more than one infant for whom service is made on the Official Guardian, one copy only of the writ need be served, but the name of each person on whose behalf the Official Guardian is served shall be stated on the copy served.

**19.** Where the action against an infant defendant is for the recovery of lands, goods, or chattels of which he is personally in possession, service shall be made on the infant personally, and a copy of the writ shall also be delivered to the Official Guardian, indorsed as aforesaid, who may enter an appearance for the infant, in the absence of other order or direction.

**20.** Where the action is against an infant in respect of a personal tort or for the recovery of money only, the infant shall be served as in the case of an adult defendant.

**21.**—(1) Where a lunatic, or person of unsound mind not so found by inquisition or judicial declaration, is a defendant, service on the committee of the lunatic or on the person with whom the defendant of unsound mind resides, or under whose care he is, shall, unless otherwise ordered, be deemed good service.

(2) The Public Trustee shall not be regarded as the committee of a lunatic detained in any Provincial Hospital as insane within the meaning of this rule.

**22.** After service of the writ no further proceedings shall be taken against a defendant who is a lunatic and has no committee, or no committee except the Public Trustee, or against a defendant of unsound mind not so found, until a guardian *ad litem* is appointed.

NOTE—*As to service upon a person confined in a Provincial Hospital as insane. See R.S.O. 1927, c. 353, s. 39.*

**23.**—(1) A corporation may be served with a writ of summons by delivering a copy to the Mayor, Warden, Reeve, President, or other head officer, or on the Township, Town, City or County Clerk, or on the Cashier, Treasurer or Secretary, Clerk or Agent of such corporation, or of any branch or agency thereof in Ontario. Any person who, within Ontario, transacts or carries on any of the business of, or any business for, any corporation whose chief place of business is without Ontario, shall, for the purpose of being served as aforesaid, be deemed the agent thereof.

(2) Service may also be effected on any person appointed for that purpose under *The Extra Provincial Corporations Act*.

(3) In the case of a railway, telegraph, or express corporation, service may be effected on the agent of such corporation at any branch or agency thereof, or on any station master of the railway company, or on the telegraph operator or express agent having charge of any telegraph or express office belonging to such corporation.

**24.** Where service of a writ out of Ontario may be allowed and the defendant, whether a British subject or not, is, or was at the time the cause of action arose, carrying on business within Ontario, if the cause of action arose in respect of such business, an order may be made allowing service upon any person having the control or management of the business.

(v) *Service Out of Ontario*

**25.**—(1) Service out of Ontario of a writ of summons or notice of writ may be allowed wherever,—

- (a) The whole subject-matter of the action is land situate within Ontario (with or without rents or profits);
- (b) Any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within Ontario is sought to be construed, rectified, set aside, or enforced;
- (c) Any relief is sought against any person domiciled or ordinarily resident within Ontario;
- (d) Administration is sought of the personal estate of a deceased person who at the time of his death was domiciled within Ontario, or the execution (as to properly situate within Ontario) of the trusts of a written instrument of which the person to be served is a trustee, which ought to be executed according to the law of Ontario;
- (e) The action is in respect of a breach committed within Ontario of a contract wherever made, even though such breach was preceded by or accompanied by a breach out of Ontario which rendered impossible the performance of the part of the contract which ought to have been performed within Ontario;
- (f) The action is upon or in relation to a mortgage or charge or lien of any description upon personal property of any description within Ontario in which foreclosure sale possession or redemption is sought but in which a personal judgment or order for payment is not claimed unless a personal judgment or order for payment may be claimed under some other provision of this rule.
- (g) The action is founded on a tort committed within Ontario;
- (h) An injunction is sought as to anything done or to be done within Ontario, or any nuisance within Ontario is sought to be prevented or removed, whether damages are or are not claimed in respect thereof;

- (i) A person out of Ontario is a necessary or proper party to an action properly brought against another person duly served within Ontario;
- (j) Service may also be allowed where the action is for any other matter and it appears that the plaintiff has a good cause of action against the defendant upon a contract or in respect of a claim for alimony, and that the defendant has assets in Ontario, of the value of \$200 at least, which may be rendered liable for the satisfaction of the judgment; but the order allowing service shall in such case provide that if the defendant does not appear, the plaintiff shall prove his claim to the satisfaction of a judge before judgment shall be entered;
- (k) In an action upon a contract where the parties have agreed that the courts of Ontario shall have jurisdiction to entertain the action or have agreed as to the manner in which service, either within or without Ontario of the writ in an action brought in Ontario may be effected. In either of such cases, service may be effected in the manner agreed upon or as may be ordered; or

(l) The action is founded upon a judgment.

(m) IN A MATRIMONIAL CAUSE [DIVORCE RULES]

(2) Where it is necessary or proper to serve persons, not already parties to an action, with an office copy of any judgment or order, or notice to prove claims thereunder, service of the same out of Ontario may be allowed.

(3) Service out of Ontario may also be allowed of an attaching order in cases falling within the provisions of Rule 590.

NOTE—*As to service out of Ontario in actions respecting shares in companies. See The Companies Act, R.S.O. 1927, c. 218.* *sec 158*

**26.** An application to allow service out of Ontario may be made *ex parte* and shall be supported by an affidavit, stating that in the belief of the deponent the applicant has a right to the relief claimed, and showing in what place or country the person to be served is or probably may be found, and whether he is a British subject or not, and that the case is a proper one for service out of Ontario under these rules.

**27.**—(1) An order allowing service of a writ of summons out of Ontario may be made before the writ is issued and shall limit the time for entering appearance.

(2) An order allowing service out of Ontario of a notice of motion or attaching order, shall limit a time, which must elapse after service before the day when the motion is to be heard.

(3) An order allowing service out of Ontario of a judgment or order or notice to prove claims thereunder shall limit a time for moving to add to, vary or set aside the judgment or order.

(4) In limiting the time, regard shall be had to the place where service is to be effected. (Form No. 64.)

**28.** Where a defendant is to be served out of Ontario with a writ of summons or notice in lieu thereof, the statement of claim shall be served therewith unless the writ is specially endorsed.

**29.** Where the defendant is to be served out of Ontario, and is neither a British subject nor in British dominions, notice of the writ and not the writ itself shall be served. Such notice shall, save as herein provided, be served personally unless otherwise directed.

**30.** Where service is to be effected in any foreign country to which this Rule is by direction of the Chief Justice of Ontario made to apply, upon any one other than a British subject, the following procedure shall be adopted:

(1) The notice of the writ and statement of claim shall be transmitted by the Registrar to the Secretary of State with a copy thereof, translated into the language of the country in which service is to be effected with a request for further transmission of the same to the government of the country in which it is to be served, with the request that service, either personal or in such manner as is consistent with the practice and usage of that country when personal service cannot be made, be effected and that return be made showing how such service has been effected.

(2) Any such official return shall be regarded as proof of the facts therein stated.

(3) The plaintiff's solicitor shall, before the papers are transmitted, pay or secure to the satisfaction of the Registrar a sum to answer the fees and charges in connection with such service.

**31.** Where in any civil or commercial matter pending before a Court or Tribunal of a foreign country, a letter of request from such Court or Tribunal for service on any

person in Ontario of any process or citation in such matter, is transmitted to the Supreme Court for Ontario, the following procedure shall be adopted:

(1) The letter of request for service shall be accompanied by a translation thereof in the English language, and by two copies of the process or citation to be served, and two copies thereof in the English language.

(2) Service of the process or citation shall, by a direction of a judge, be effected by any sheriff or his authorized agent.

(3) Such service shall be effected by delivering to and leaving with the person to be served one copy of the process to be served and one copy of the translation thereof or may be effected in such other manner as may be directed by the letter of request.

(4) After service has been effected the process shall be returned to the Clerk of the Supreme Court, together with the evidence of service by affidavit of the person effecting the service, sworn before a Notary Public and verified by his seal, and particulars of charges for the cost of effecting such service.

(5) The Clerk of the Supreme Court for Ontario shall return the letter of request for service, together with the evidence of service, with a certificate appended thereto, duly sealed with the seal of the said court. Such certificate shall be in accordance with Form No. 14.

(6) Nothing in this rule shall prevent service from being effected in any other manner in which it may now be made.

*(vi) Indorsement of Claim*

**32.** Upon every writ of summons the plaintiff shall indorse a concise statement of his claim. It shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief sought. (*See Form No. 4*).

*(vii) Special Indorsements*

**33.—(1)** The writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of claim, where the plaintiff seeks to recover a debt or liquidated demand in money (with or without interest, and whether the interest be payable by way of damages or otherwise), arising,—

- (a) Upon a contract, express or implied (as for instance on a bill of exchange, promissory note, cheque, or other simple contract debt); or
- (b) On a bond or contract under seal for payment of a liquidated sum; or on a judgment; or
- (c) On a statute where the amount sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or
- (d) On a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand; or
- (e) On a trust;

*II*  
and also

- (f) In actions for the recovery of land (with or without a claim for rent or mesne profits); and
- (g) In action for the recovery of chattels.
- (h) In actions for foreclosure or sale.

(2) The writ in such case shall be in accordance with Form No. 5.

(3) Where a writ is specially indorsed in respect of any of the above claims the plaintiff may also claim in respect of any other matter.

**34.** Where the plaintiff in an action of dower claims damages for detention of her dower, the indorsement shall contain a statement that the plaintiff claims damages for the detention of her dower, from some day to be stated.

## CHAPTER III

### DEFAULT OF APPEARANCE

**35.** Except where otherwise provided or otherwise ordered a defendant who fails to appear shall not be entitled to notice of any subsequent proceedings in the action.

**36.** Where a defendant fails to appear the plaintiff before signing judgment or noting the pleadings closed, shall file an affidavit of service of the writ, or the notice in lieu thereof, or the undertaking of the defendant's solicitor accepting service and agreeing to enter an appearance, with an affidavit verifying the undertaking as the case may be.

**37.** Where the writ is specially indorsed for a debt or liquidated demand in money, and any defendant fails to appear, the plaintiff, notwithstanding that the writ may be indorsed with any other claim, may, as against such defendant, sign final judgment for any sum not exceeding the amount for which the writ is so specially indorsed, together with interest as claimed to the date of the judgment, and for his costs, without prejudice to his right to proceed with the action against any other defendant, and as to any other claims indorsed. (Form No. 86).

**38.—(1)** Where the writ is specially indorsed with a claim for the recovery of chattels, and any defendant fails to appear the plaintiff, notwithstanding that the writ may be indorsed with any other claim, may, as against such defendant, sign final judgment for the recovery of the chattels and his costs without prejudice to his right to proceed with the action against any other defendant and as to any other claims indorsed. (Form No. 92).

(2) Where the claim indorsed upon the writ includes a claim for the detention of goods and pecuniary damages, or either of them, and any defendant fails to appear, interlocutory judgment may be signed against such defendant, directing an assessment of damages, without prejudice to the right of the plaintiff to proceed against any other defendants or for any other claim; and such damages may, unless otherwise ordered, be assessed, as against such defendant, either before or at the same time as the trial of the action, against any other defendant, or for any other claim, or the court may order that instead of an assessment the value of the goods and amount of damages, or either of them, shall be ascertained by a reference or in any other way. (Form No. 93).

(3) When interlocutory judgment has been signed and damages have been assessed a final judgment for the recovery of the damages awarded may be entered. (Form No. 94).

**39.** No interlocutory judgment shall be signed for default of appearance, unless the precise cause of action is clearly stated in the indorsement of the writ.

**40.—(1)** Where a defendant fails to appear in an action for dower, the plaintiff may sign judgment of seisin forthwith, and sue out a writ of assignment of dower, but she shall not, unless otherwise ordered, be entitled to costs. (Form No. 91).

(2) Where the plaintiff claims arrears of dower or damages for detention of her dower, the entry of a judgment of seisin and the taking of proceedings for the assignment of her dower thereunder shall not prevent her from proceeding with the action for the recovery of such arrears or damages.

**41.**—(1) Where an action is for or includes a claim for the recovery of land, and any defendant fails to appear, or if an appearance is entered but the defence is limited to part only, the plaintiff, notwithstanding that the writ may be indorsed with any other claim, may sign judgment against such defendant for possession of the land or of the part thereof to which the defence does not apply without prejudice to the right of the plaintiff to proceed against any other defendant or for any other relief. (Form No. 87).

(2) Where judgment by default is signed, but is not signed against all the defendants, a writ of possession shall not be issued unless directed by a judge.

**42.** Where an action is for or includes a claim for the recovery of land, and any defendant fails to appear, and the writ is indorsed with a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed or any part of them, or damages for breach of contract, or wrong or injury to the premises claimed, the plaintiff may sign judgment against such defendant for possession, and may proceed as to the other claims. (Form No. 89).

**43.** Where any defendant fails to appear in an action for recovery of land, the plaintiff shall not be entitled to costs unless he files an affidavit showing that such defendant was at the time of the issue of the writ in actual adverse possession of the land, or obtains an order allowing him to sign judgment as well for his costs as for possession of the land.

**44.** In all cases not hereinbefore provided for a statement of claim must be delivered.

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## CHAPTER IV

### APPEARANCE, ETC.

**45.** When a defendant is served within Ontario, he shall appear within ten days, including the day of service.

**46.** A defendant shall appear by filing with the proper officer a memorandum in writing, if he appears by solicitor, stating the name and place of business of such solicitor, or,

if he appears in person, stating that he defends in person, and giving his address and naming a place to be called his address for service, which shall not be more than two miles from the office from which the writ of summons was issued. (Form No. 6).

**47.** If the memorandum does not contain the address of the solicitor or the defendant (as the case may be) it shall not be filed; and if such address is illusory or fictitious, the appearance may be set aside.

**48.** Where a defendant desires to contend that an order for service out of Ontario could not properly be made, a conditional appearance may be entered by leave.

~~49.~~ A defendant may appear at any time before judgment.

**50.** A defendant appearing to a writ, indorsed to recover a money demand, may, in his appearance, state that he disputes only the amount claimed. The plaintiff may thereupon proceed to take an account of the amount due to him before the officer with whom the judgment is to be signed on four clear days' notice, and judgment may be signed for the amount found due, or the plaintiff may move for a judgment of reference.

**51.**—(1) A defendant in an action for dower, may, with his appearance, file an acknowledgment that he is tenant of the freehold of the land named in the writ, together with his consent that the plaintiff may have judgment for her dower therein, and may take the proceedings authorized by *The Dower Procedure Act* to have the same assigned to her, unless the parties otherwise agree, and he shall forthwith serve the plaintiff or her solicitor with a copy of such acknowledgment and consent, and upon such consent the plaintiff may enter judgment of seisin, and may obtain a writ of assignment of dower, but shall not, without an order, be entitled to tax or recover the costs of the action or judgment against the defendant.

(2) The entry of a judgment of seisin and the taking of proceedings for the assignment of her dower thereunder shall not prevent the plaintiff from proceeding with the action for the recovery of arrears of dower or damages.

(3) Where the defendant has filed and served such acknowledgment and consent, and the plaintiff does not within three months thereafter sue out and cause to be executed a writ of assignment of dower, the defendant may, by leave, sue out such writ; and the writ shall be, as nearly as may be, in the same form as a writ sued out by the plaintiff, and the like proceedings shall be had thereon.

*entitled in writ*

**52.** In an action for dower the landlord or other person under whom a tenant in possession, who is not also tenant of the freehold, holds or entered into possession, may, without leave, appear and defend, by filing with his appearance an affidavit that he is tenant of the freehold, and is advised and believes that there is good ground for disputing the plaintiff's claim to dower.

**53.** Any person not named as a defendant in a writ for the recovery of land, may, without leave, appear and defend, by filing with his appearance an affidavit stating that he is in possession either by himself or his tenant (as the case may be).

**54.** Any person entering an appearance under the two preceding rules, shall forthwith give notice thereof, and shall in all subsequent proceedings be named as a party defendant; if notice of appearance is not forthwith given the plaintiff may proceed as in case of non-appearance.

**55.** Any person appearing to a writ for the recovery of land may limit his defence to a part only of the land, describing the part with reasonable certainty in his appearance, or in a notice to be served within four days after appearance. (Form No. 27), and thereupon the plaintiff may sign judgment for the recovery of possession of the land as to which no defence is made. (Form No. 90).

**56.**—(1) Where the writ is specially indorsed the defendant shall with his appearance file an affidavit that he has a good defence upon the merits and showing the nature of his defence, with the facts and circumstances which he deems entitle him to defend the action and shall forthwith serve a copy of such affidavit upon the plaintiff. The affidavit may be made by the defendant or by any one having knowledge of the facts.

(2) A counterclaim shall be deemed to be a defence within the meaning of this Rule.

(3) If the defendant fails to file an affidavit the appearance shall not be received and the plaintiff shall be entitled to sign judgment for default of appearance.

(4) An affidavit of merits shall not be necessary where an appearance is entered by the Official Guardian for an infant or lunatic, or by an executor or administrator or trustee, or an assignee for the benefit of creditors or a liquidator or receiver, who swears that after careful inquiry he does not feel justified in admitting the plaintiff's claim and desires that it shall be proved.

## CHAPTER V

MOTION FOR JUDGMENT ON SPECIALLY INDORSED WRITS AND  
IN ACTIONS FOR ACCOUNT

**57.**—(1) Where the defendant appears to a writ specially indorsed and files an affidavit of merits, the plaintiff may cross-examine upon such affidavit and move for judgment, and if the court is satisfied that the defendant has not a good defence to the action on the merits, or has not disclosed such facts as may be deemed sufficient to entitle him to defend the action, judgment may be given for the plaintiff.

(2) Such motion may be made in respect of a cause of action specially indorsed, though the writ may also be indorsed with any other claim.

(3) On any such motion any amendment of the writ which might be ordered on a substantive motion may be directed, and judgment may be awarded in accordance with the writ as amended.

(4) Where a counterclaim is set up regard shall be had to the provisions of Rule 116.

**58.** Where the defence disclosed applies only to a part of the plaintiff's claim, or any part of his claim is admitted to be due, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to, or as is admitted to be due, subject to such terms, if any, as to suspending execution, or payment into court as may seem just, and the defendant may be allowed to defend as to the residue of the plaintiff's claim, or a reference may be directed under Rule 61.

**59.** Judgment may be awarded and execution issued against any defendant without prejudice to the plaintiff's right to proceed against any other defendant.

**60.** On any such motion, an order may be made, giving the defendant leave to defend either unconditionally, or subject to such terms as may seem just, or for a speedy trial of the action with or without pleadings upon such terms as may be deemed proper.

**61.** On any such motion, if it appears that the defence disclosed is substantially only as to the amount recoverable, the court may direct a reference, and either pronounce judgment to take effect on the confirmation of the report, or reserve further directions and questions of costs for consideration after the report is made.

**62.** Where a writ is specially indorsed and some special reason for urgency is shown the plaintiff may, at any time, by leave, serve notice of motion for judgment. Such leave may be given *ex parte* and subject to such directions, as to the service of the notice of motion and filing and service of the affidavits and otherwise, as may seem just.

**63.** In default of appearance when the plaintiff's claim is for an account, the plaintiff may apply for a judgment for the taking of the account claimed, with all directions usual in similar cases.

**64.** Where the plaintiff's claim is for an account and appearance is entered the plaintiff may move for judgment, without pleading, and unless the defendant satisfies the court that there is some preliminary question to be tried the appropriate judgment shall be pronounced.

**65.** The court may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that some special or further relief is sought, or some issue is to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

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## CHAPTER VI

### PARTIES AND JOINDER OF CAUSES OF ACTION

#### (i) *Generally*

**66.** All persons may be joined in an action as plaintiffs in whom any right to relief in respect of or arising out of the same transaction or occurrence, or series of transactions or occurrences, is alleged to exist, whether jointly, severally, or in the alternative, where if such persons brought separate actions any common question of law or fact would arise; but, if, upon the application of a defendant, it appears that such joinder may embarrass or delay the trial of the action, the court may order separate trials, or make such other order as may be expedient; and without any amendment, judgment may be given for such one or more of the plaintiffs as may be found entitled to relief, for such relief as he or they may be entitled to but the defendant, though unsuccessful, shall be entitled to his costs occasioned by joining any person who is not found entitled to relief, unless the court otherwise orders.

*Plaintiff and  
or more defendants*

**67.** Where the plaintiff claims that the same transaction or occurrence, or series of transactions or occurrences, give him a cause of action against one or more persons, or where he is in doubt as to the person from whom he is entitled to redress, he may join as defendants all persons against whom he claims any right to relief, whether jointly, severally, or in the alternative; and judgment may be given against one or more of the defendants according to their respective liabilities. The court may order separate trials or make such other order as may be deemed expedient, if such joinder is deemed oppressive or unfair.

**68.** It shall not be necessary that every defendant to an action shall be interested as to all the relief claimed, or as to every cause of action included therein.

**69.** A plaintiff may unite, in the same action, several causes of action.

**70.** A claim by or against husband and wife may be joined with a claim by or against either of them separately.

**71.** A claim by or against an executor or administrator may be joined with a claim by or against him personally, provided the last mentioned claim is alleged to have arisen with reference to the estate represented by him in the action.

**72.** A claim by plaintiffs jointly, may be joined with a claim by them or any of them separately against the same defendant.

**73.** If several causes of action joined in the same action are such as cannot be conveniently disposed of in one action, the court may order any of them to be excluded, or may direct the issues respecting the separate causes of action to be tried separately.

**74.—(1)** Trustees, executors and administrators may sue and be sued on behalf of, or as representing, the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested, and shall represent them; but the court may at any time order any of them to be made parties in addition to, or in lieu of, the previous parties.

(2) This rule shall apply to an action to enforce a security by foreclosure or otherwise.

NOTE—*As to parties to mortgage actions where no personal representative. See R.S.O. 1927, c. 148, s. 9.*

**75.** Where there are numerous persons having the same interest, one or more may sue or be sued, or may be authorized by the court to defend, on behalf of, or for the benefit of all.

**76.** Where the right of an heir-at-law or of the next of kin, or of a class, or of an unborn person, depends upon the construction of an instrument, and it is not known or is difficult to ascertain who is such heir-at-law or next of kin or class, and the court deems it convenient to have the question determined before the heir-at-law, next of kin or class in question is ascertained, or before the birth of any unborn person, the court may appoint some person to represent the heir-at-law, next of kin or class, or unborn person, and the judgment of the court shall be binding upon the person or class or unborn person so represented.

**77.** The court, may appoint some person to represent, for the purposes of any action or proceeding, the interest of any person or class, who may be not ascertained or who may be unborn, and the judgment of the court shall be binding upon the person or class so represented.

**78.** Where in a proceeding concerning a trust a compromise is proposed and some of the persons interested in the compromise are not parties to the proceeding, but there are other persons in the same interest before the court and assenting to the compromise, the court if satisfied that the compromise will be for the benefit of the absent persons, and that to require service on them would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts.

**79.** A residuary legatee, or next of kin, may have a judgment for the administration of the personal estate of a deceased person without serving the other residuary legatees or next of kin.

**80.** A legatee interested in a legacy charged upon real estate, or a person interested in the proceeds of real estate directed to be sold, may have a judgment for the administration of the estate of a deceased person without serving any other legatee or person interested in the proceeds.

**81.** A residuary devisee, or heir, may have the like judgment, without serving any other residuary devisee, or heir.

**82.** One *cestui que trust*, under an instrument, may have a judgment for the execution of the trusts of the instrument, without serving the other *cestuis que trustent*.

**83.** In actions for the protection of property, and in cases in the nature of waste, one person may sue on behalf of himself, and of all persons having the same interest.

**84.** An executor, administrator, or trustee, may obtain a judgment against any one legatee, next of kin or *cestui que trust*, for the administration of the estate or the execution of the trusts.

**85.** The court may require any other person to be made a party to an action to which Rules 79 to 84 apply, and may give the conduct of the action to such party as it deems proper; and may make such order as it deems just for placing the plaintiff on the record on the same footing in regard to costs as other persons having a common interest with him in the matter in question.

**86.** Where a reference is directed the persons who, but for Rules 79 to 84, would have been necessary parties, shall be served with an office-copy of the judgment (unless the court or Master dispenses with such service) indorsed with a notice according to Form No. 38, and after such service they shall be bound by the proceedings in the same manner as if they had been originally made parties; and upon notice to the plaintiff they may at their own risk as to costs require notice to be given them to enable them to attend the proceedings under the judgment. Any person so served may apply to the court to add to, vary, or set aside the judgment within ten days from the date of such service.

**87.** In administration proceedings no person other than the executor or administrator shall, unless by leave, be entitled to appear on the claim of any person against the estate of the deceased.

**88.** An assignee of a chose in action may sue in respect thereof without making the assignor a party. (*See R.S.O. 1927, chapter 137, section 49.*)

**89.** The court, if it thinks fit, may pronounce a judgment saving the rights of all persons not parties.

**90.** Where it appears that a deceased person who was interested in the matters in question has no personal representative, the court may either proceed in the absence of any person representing his estate or may appoint some person to represent the estate for all the purposes of the action or other proceeding, on such notice as may seem proper, notwithstanding that the estate in question may have a substantial interest in the matters, or that there may be active duties to be performed by the person so appointed, or that he

may represent interests adverse to the plaintiff, or that administration of the estate whereof representation is sought is claimed; and the order so made and any orders consequent thereon, shall bind the estate of such deceased person, in the same manner as if a duly appointed personal representative of such person had been a party to the action or proceeding.

(ii) *Infants and Lunatics*

**91.** An infant may sue by his next friend; and may defend by his guardian appointed for that purpose, or by the Official Guardian, as the case may be.

**92.** Where an infant defendant is not represented by the Official Guardian, a guardian may be appointed for him by the court.

**93.** A person desirous of appointing a guardian for himself other than the Official Guardian to defend an action or matter, may go before a judge with the proposed guardian. He must satisfy the judge by affidavit that the proposed guardian is a fit person, and has no adverse interest; and the judge may examine the proposed guardian, or the person making the affidavit, *vivid voce*, or require further evidence to be adduced until he is satisfied of the propriety of the appointment.

**94.** A person of unsound mind (not so found by inquisition or judicial declaration) may sue by his next friend, and may defend by his guardian.

**95.**—(1) Where no appearance has been entered to a writ of summons for a defendant who is a person of unsound mind not so found, the plaintiff may apply for an order that a guardian of such defendant be appointed, by whom he may appear and defend.

(2) No such order shall be made unless it appears that the writ was duly served, and that notice of the application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in the notice named for hearing the application, served upon, or left at the dwelling-house of, the person with whom the defendant resides, or under whose care he is at the time of serving such notice.

(3) The Official Guardian shall be appointed, unless for good reason it is otherwise directed.

**96.** Where a person of unsound mind not so found by inquisition or judicial declaration is served with an office copy of a judgment or order or is made a party after judgment, a guardian *ad litem* shall be appointed for him after the like notice.

**97.** A lunatic who has been so found may sue or defend by his committee.

**98.** A person who has been declared incompetent under *The Lunacy Act* shall be represented by any person who may be authorized under the provisions of that Act.

**99.** Unless otherwise ordered, before the name of any person is used as next friend or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the office in which the cause or matter is commenced.

(iii) *Partners, etc.*

**100.** Any two or more persons (whether British subjects or not and whether residing within or without Ontario) claiming or being liable as partners, and carrying on business within Ontario, may sue or be sued in the name of the firm of which such persons were co-partners at the time of the accruing of the cause of action.

**101.** Where persons are sued as partners in the name of the firm the writ shall be served either upon any one or more of the partners, or at the principal place within Ontario of the business of the partnership, upon any person having the control or management of the partnership business there; and such service shall be deemed good service upon the firm whether any of the members thereof are without Ontario or not, but in the case of a partnership which has been dissolved to the knowledge of the plaintiff before action, the writ of summons shall be served upon every person within Ontario sought to be made liable. Every person so served shall be informed by notice in writing given at the time of service whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters. In default of such notice the person served shall be deemed to be served as a partner.

**102.** Persons sued as partners in the name of the firm shall appear individually in their own names, but all subsequent proceedings shall continue in the name of the firm.

**103.** Where a writ is served upon a person as the person having the control or management of the partnership business an appearance by him shall not be necessary unless he is a member of the firm.

**104.** A person served as a partner may (1) enter an appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from other-

wise serving the firm and obtaining judgment against the firm in default of appearance if no partner has entered an appearance in the ordinary form; or (2) enter an appearance not only denying that he is a partner, but also disputing the plaintiff's claim.

**105.**—(1) Where a judgment or order is obtained against a firm, execution may issue against the property of,—

- (a) The partnership;
- (b) Any person who has by his appearance or notice, under Rule 14 or pleading, admitted that he is, or who has been adjudged, to be a partner;
- (c) Any person who has been served as a partner with the writ of summons and has failed to appear.

(2) If the party who has obtained the judgment or order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply for leave so to do; and the court may give such leave if the liability be not disputed, or, if disputed, after such liability has been determined in such manner as the court may direct.

**106.** A judgment against a firm in the firm name shall not release, render liable or affect any member thereof who was out of Ontario when the writ was issued and who has not appeared thereto, unless he has been served either within Ontario or in accordance with the Rules respecting service out of Ontario, but this provision shall not prevent the enforcement of the judgment against partnership property.

**107.** Rules 100 to 106 shall apply to actions between a firm and one or more of the members and to actions between firms having one or more members in common, if the firm or firms carry on business within Ontario, but execution shall not issue in such actions without leave, and on application for leave, all such accounts and inquiries may be ordered and directions given as may seem just.

**108.**—(1) Any person (whether a British subject or not, and whether residing within or without Ontario) carrying on business within Ontario in a name or style other than his own name, may be sued in such name or style.

(2) The writ may be served upon the person so carrying on the business if he be within Ontario, or at the place of business within Ontario (or if there are several such places, at the place within the county in which the cause of action arose), upon any person having the control or management of the business there.

(3) The person upon whom the writ is served shall be informed by notice in writing, given at the time of service, whether he is served as the person carrying on the business or as a person having the control or management of it, and in default of such notice he shall be deemed to be served as the person carrying on the business.

(4) The person so sued shall appear in his own name, but all subsequent proceedings shall continue in such name or style.

(5) A person served as the person carrying on the business may enter an appearance under protest denying that he is the person so carrying on the business, but such appearance shall not preclude the plaintiff from otherwise serving the person sued or from obtaining judgment in default of appearance in the ordinary form by the person so sued.

(6) Any judgment or order in the action may be enforced by execution against,—

(a) The property of the person so sued, used or employed in or in connection with the business.

(b) Any property of a person who by his appearance or by notice under Rule 14, has admitted that he is or has been adjudged to be the person carrying on the business, or has been served with the writ as the person carrying on the business and has failed to appear.

(7) When judgment has been signed for default of appearance and the writ has not been personally served upon the person whom the plaintiff alleges to be carrying on the business, the court may give leave to issue execution against such person if his liability be not disputed, or, if disputed, after it has been determined in such manner as the court may direct.

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## CHAPTER VII

### PLEADINGS

#### *General Provisions*

**109.**—(1) The plaintiff shall state the nature of his claim and the relief sought in a pleading to be called the Statement of Claim and may therein alter, modify, or extend his claim as indorsed upon the writ.

(2) When a defendant has not appeared and the statement of claim alters, modifies, or extends the claim as indorsed upon the writ, the plaintiff shall not be entitled to judgment on default of defence unless the statement of claim is served personally or in pursuance of an order for substitutional service.

NOTE—*In all actions proceeding to trial pleadings are necessary, even though the writ has been specially indorsed and an affidavit of merits has been filed, unless an order has been made under Rule 60 for a trial without pleadings.*

**110.** The plaintiff shall deliver his statement of claim within one month from the entering of appearance or at any time before appearance and where there is more than one defendant the statement of claim shall be delivered within a month from the last appearance or from the time when the last appearance should have been entered.

**111.** The defendant shall deliver his defence and counter-claim (if any) within ten days from the delivery of the Statement of Claim or from the time limited for appearance which ever shall be last.

✓ **112.** Where a defendant sets up a counter-claim which raises questions between himself and the plaintiff and any other person he shall add a second style of cause in which he shall be described as "Plaintiff by Counter-claim" and the plaintiff and such other person shall be described as "Defendants by Counter-claim," and shall deliver his counter-claim to such of them as are parties to the action within the period limited for the defence and shall serve the same without delay upon such of them as are not parties to the action together with a summons according to Form No. 23, issued from the proper office and a copy of the statement of claim.

**113.** Any defendant to a counter-claim, shall within ten days after service thereof on him, deliver a defence thereto.

**114.** A defendant may set up by way of counter-claim, any right or claim whether the same sounds in damages or not.

**115.** A counter-claim shall be treated as an action, so as to enable the court to pronounce a final judgment upon all matters set up therein.

**116.** Where a defendant does not dispute the plaintiff's claim, but sets up a counter-claim, the court may stay proceedings respecting the claim until the counter-claim is disposed of.

**117.** Where a plaintiff does not dispute the defendant's counter-claim the court may stay proceedings upon the counter-claim until the claim is disposed of.

**118.** A plaintiff shall deliver his reply, if any, within ten days after the defence or the last of the defences has been delivered.

**119.** No pleading subsequent to reply shall be delivered without leave.

**120.** As soon as either party has joined issue upon any pleading of the opposite party, or as soon as the time for delivering a reply or subsequent pleading has expired, the pleadings shall be deemed to be closed.

**121.** Where any party makes default in delivering a statement of defence to the statement of claim or to the counter-claim within the time limited therefor, in cases where judgment cannot be signed, the opposite party may, upon proof of the default, by *praeceipe* to the officer with whom the pleadings are filed, require him to note the default, and thereafter no pleading by the party in default shall be received or filed without the leave of the court. Until default is so noted the party in default may file his pleading.

**122.** Either party shall be entitled to raise by his pleading any point of law, and by consent of the parties, or by leave of a judge, the same may be set down for hearing at any time before the trial, otherwise it shall be disposed of at the trial.

**123.** Upon the determination of such point of law the court may pronounce such judgment as may be deemed proper.

**124.** A judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action or defence being shown to be frivolous or vexatious, may order the action to be stayed or dismissed, or judgment to be entered accordingly.

**125.** Where an issue is directed to be tried it shall, if the parties differ, be settled in chambers, and as soon as settled be filed in the office in which the proceedings are carried on, and thereafter the proceedings in the issue shall be carried on in the same manner as the proceedings in an action.

**126.**—(1) The parties to any cause may concur in stating questions of law arising, in the form of a special case for the opinion of the court; and may agree that on the judgment

*no reply or  
counter  
pleaded*

*by motion  
in cause  
may be denied  
immediately  
after such  
hearing*

of the court being given in the affirmative or negative of the question or questions of law raised, certain specific relief may be awarded.

(2) Upon the argument of the case the whole contents of the documents referred to therein may be read, and the court may draw from the facts and documents any inference, either of fact or law, as at a trial.

**127.** A plaintiff may, without leave, amend his statement of claim, including a claim specially indorsed on the writ, once, either before the statement of defence has been delivered, or after it has been delivered and before the expiration of the time limited for reply, and before replying.

**128.** Where a plaintiff has amended his statement of claim the opposite party shall plead thereto or amend his pleading within the time he then has to plead, or within ten days from the delivery of the amendment, whichever shall last expire, and in case the opposite party has pleaded before the delivery of the amendment and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.

**129.** Either party may amend his pleadings at any time on filing the written consent of the opposite party.

**130.** An amendment may be made by leave of the court, or of the judge at the trial, and such amendment shall be at once made on the face of the record.

**131.** A party who has obtained leave to amend shall make the amendment within the time limited by the order, or if no time is limited, within ten days from the date of the order.

**132.** A pleading may be amended by written alterations in the copies filed and served and by additions on paper to be interleaved therewith if necessary; unless the amendments are so numerous or of such a nature that making them in the copies filed and served would render the same difficult or inconvenient to read; in either of which cases the amendment shall be made by delivering a fresh copy of the pleading as amended.

**133.** Where a pleading is amended a memorandum shall be made in the margin stating the date of and authority for the amendment, and the amendment shall be written or underlined in ink of a different colour from that used in the original pleading.

**134.**—(1) The court may, at any stage of the proceedings, order that the name of a plaintiff or defendant improperly joined be struck out, and that any person who ought to have been joined, or whose presence is necessary in order to enable the court effectually and completely to adjudicate upon the questions involved in the action, be added; or where an action has through a *bona fide* mistake been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the court may order any person to be substituted or added as plaintiff.

(2) No person shall be added or substituted as a plaintiff, or as the next friend of a plaintiff, without his own consent in writing thereto to be filed.

(3) Parties added or substituted as defendants shall, unless otherwise ordered, be served with the amended writ of summons, and the proceedings as against them shall be deemed to have begun only at the time when they are added.

**135.** If a statement of claim has been delivered previously to a defendant being added, it shall be amended in such manner as the making of the new defendant a party may render desirable; and a copy of the amended statement of claim shall also be delivered to the new defendant.

*136. The court may order that any pleading, petition or affidavit, or any part of a pleading, petition or affidavit, which is scandalous, be taken off the file, or may direct the scandalous matter to be expunged.*

*137. Any pleading which may tend to prejudice, embarrass or delay the fair trial of the action may be struck out or amended.*

**138.** A further and better statement of the nature of the claim or defence or further and better particulars of any matter stated in any pleading or special endorsement, may in all cases be ordered. (Form No. 65).

#### GENERAL RULES OF PLEADING

**139.** Every writ, pleading or other document, may be printed, typewritten, or written in whole or in part.

**140.** Every pleading shall be filed, and served upon all parties concerned therewith, and shall be marked on the face with the date of filing, and with the title of the action, the description of the pleading, and the name and place of business

of the solicitor and agent (if any) of the party filing the same, or the name and address of the party filing the same if he does not act by a solicitor.

**141.** Pleadings shall contain a concise statement of the material facts upon which the party pleading relies, but not the evidence by which they are to be proved; dates, sums and numbers shall be expressed in figures.

**142.** Each party shall admit such of the material allegations contained in the pleading of the opposite party as are true, and a defendant shall not deny generally the allegations contained in the statement of claim but shall set forth the facts upon which he relies even though this may involve the assertion of a negative.

**143.** A defendant to an action or counter-claim shall raise all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, the Statute of Limitations, release, payment, performance, facts showing illegality either by statute or common law, or the Statute of Frauds.

**144.** Save as otherwise provided, the silence of a pleading as to any allegation contained in the previous pleading of the opposite party shall not be construed as an admission of the truth of such allegation.

**145.** Every statement of claim and counter-claim shall state specifically the relief claimed, either simply or in the alternative, and may also ask for general relief. When damages are claimed the amount shall be named.

**146.** Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the party relying thereon, and an averment of the performance or occurrence of all conditions precedent necessary for the case by the plaintiff or defendant shall be implied in his pleading.

**147.** Where the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof.

**148.** Where it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact, without setting out the circumstances from which the same is to be inferred.

**149.** Where it is material to allege notice to a person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact unless the form or precise terms of the notice is or are material.

**150.** Where a contract or relation between persons does not arise from an express agreement, but it is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege the contract or relation as a fact.

**151.** Neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side.

[E.g.—Consideration for a bill of exchange.]

**152.** If either party wishes to deny the alleged constitution of any partnership, or the right of any other party to claim as executor, or as trustee, or as assignee in insolvency, or in any representative or other alleged capacity, he shall deny the same specifically, or the same will be taken to be admitted.

**153.** Unless the incorporation of a corporate party is specifically denied, it shall not be necessary to prove it.

**154.** Where a contract is alleged, a denial of the contract shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise.

**155.** A defendant in an action for the recovery of land who is in possession by himself or his tenant need not plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff; but, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and he may rely upon any ground of defence which he can prove.

**156.** Where a defendant by virtue of any statute enabling him so to do pleads not guilty by statute he shall in his defence refer to the statute giving the right so to plead, and also to all statutes upon which he relies, giving chapter and section in every such reference, and if so required shall deliver particulars of his defence.

*Departure* **157.** A subsequent pleading shall not raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

**158.** In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, he shall not be entitled on the trial without the leave of the presiding judge to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, unless in his pleading or by notice given seven days at least before the trial he furnishes particulars in writing to the plaintiff of the matters as to which he intends to give evidence.

**159.** A ground of defence or counter-claim which has arisen after action, but before the defendant has delivered his statement of defence, may be pleaded either alone or with other grounds of defence.

**160.** If, after a counter-claim has been delivered, a ground of defence thereto arises it may be pleaded in answer thereto.

**161.** Where a ground of defence or counter-claim arises after the delivery of the statement of defence or counter-claim, the defendant may within ten days after such ground of defence or counter-claim has arisen, deliver a further defence or counter-claim, setting forth the same, or introduce the same by amendment into his statement of defence or counter-claim.

**162.** Where a ground of defence to any counter-claim arises after the delivery of the defence thereto the defendant to the counter-claim may within ten days after such ground of defence has arisen, deliver a further pleading setting forth the same, or may set up such new ground of defence by amendment.

**163.** Any such amendment may be made on *praecipe*.

**164.** Where any defendant pleads any ground of defence or counter-claim which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence; and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless otherwise ordered. (Forms Nos. 26 and 95).

## CHAPTER VIII

## THIRD-PARTY PROCEDURE

**165.**—(1) Where a defendant claims to be entitled to contribution or indemnity from or any other relief over against any person not a party to the action, hereinafter called a third party, he may issue a notice in accordance with Form No. 22 (hereinafter called the third party notice) which shall be sealed in the same manner as the writ of summons, and shall state the nature and grounds of the claim.

(2) A copy of the notice shall be filed, and a copy together with a copy of the statement of claim or, if there be no statement of claim, of the writ, shall be served on the third party within the time limited for the delivery of the defence.

**166.** If a third party desires to dispute the plaintiff's claim in the action as against the defendant or his own liability to the defendant, he shall enter an appearance within ten days from the service of the notice, and in default of his so doing he shall be deemed to admit the validity of any judgment obtained (whether by consent or otherwise) against such defendant, and his own liability to contribute or indemnify, claimed in the third party notice.

**167.** Where the third party makes default in entering an appearance, the defendant giving the notice, in case he suffers judgment by default, shall be entitled at any time to move for judgment against the third party to the extent of the contribution, indemnity or relief over claimed in the third party notice.

**168.** Where a third party makes default in entering an appearance, if the action is tried and results in favour of the plaintiff, the Judge who tries the action may, at or after the trial, direct such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party.

**169.** Where the third party appears pursuant to the third party notice, the defendant giving the notice may apply for directions, and the Court may order the question of liability, as between the third party and the defendant giving the notice, to be tried in such manner at or after the trial of the action as may seem proper; and may give the third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take part therein, and generally may order such proceedings to be taken and give such directions as may appear proper for having the question between

the defendant and the third party most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action.

**170.** Where a defendant claims to be entitled to contribution or indemnity from or relief over against any other defendant, a notice may be issued and the same procedure shall be adopted as if such last-mentioned defendant were a third party, except that a copy of the statement of claim or writ need not be served with the third party notice, and service may be effected upon the solicitor in the action, if any, of the defendant sought to be made liable as a third party.

**171.** A plaintiff is not to be prejudiced or unnecessarily delayed by reason of questions between the defendant and the third party in which he is not concerned; and such directions shall be given and terms imposed as may be necessary to prevent delay of the plaintiff, where it can be done without injustice to the defendants and third party.

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## CHAPTER IX

### TIME AND VACATIONS

**172.** Where a period of less than six days is prescribed holidays shall not be reckoned.

**173.**—(1) Where a number of days not expressed to be clear days is prescribed the same shall be reckoned exclusively of the first day and inclusively of the last day.

(2) Where the days are expressed to be clear days, or where the term "at least" is added, both days shall be excluded.

**174.** Where the time for doing any act or taking any proceeding expires on a holiday the act or proceeding may be done or taken on the next juridical day.

**175.** Any time prescribed may be enlarged or abridged by consent in writing, without order.

**176.** The Court may from time to time enlarge or abridge the time prescribed by the Rules, or by an order, for doing any act or taking any proceeding, and this power may be exercised although the application is not made until after the expiration of the time prescribed.

**177.**—(1) The Vacations shall be:

- (a) The Long Vacation consisting of the months of July and August.
- (b) The Christmas Vacation consisting of the period from the 24th day of December to the 6th day of the following January, both days inclusive.
- (2) Office hours during vacation shall be from 10 a.m. to 12 noon.

**178.** An examination shall not be held nor shall pleadings be delivered or amended in the Long Vacation, except by consent or by direction of the Court, but when a writ is to be served out of the jurisdiction, and in Mechanics' Lien proceedings, the statement of claim may be delivered in vacation.

**179.** Unless otherwise directed by the Court, the time of the Long Vacation, or of the Christmas Vacation, shall not be reckoned in the computation of the times appointed or allowed by these Rules for delivering or amending any pleading, or in the times allowed for the following purposes:

- (a) Appeals to a Judge in Chambers;
- (b) Reports becoming absolute;
- (c) Moving to discharge an order adding a party;
- (d) Moving to add to, vary, or set aside a judgment by a party served therewith;
- (e) Doing an act or taking a proceeding in appealing to a Divisional Court.

**180.** One or more of the Judges shall be selected for the hearing in Toronto during Long and Christmas Vacations of all such applications as may require to be heard promptly.

**181.** During Long Vacation all applications within the jurisdiction of the Master which require to be heard immediately or promptly shall be heard by one of the following officers, viz., the Master, the Assistant Masters, and the Registrars, who shall arrange among themselves before the commencement of each Long Vacation on what days and for what period each shall act; and in the absence of such arrangement the duty shall devolve upon them in rotation, beginning with the junior officer in order of appointment, and they shall sit at least one day in each week.

**182.** The *praeципе* for any cheque to be issued during the Long Vacation shall be lodged in the Accountant's Office on or before the 20th day of July, unless otherwise directed by a Judge.

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## CHAPTER X

### MISCELLANEOUS PROVISIONS

#### (i) *Effect of Non-compliance and Errors*

**183.** A proceeding shall not be defeated by any formal objection, but all necessary amendments shall be made, upon proper terms as to costs and otherwise, to secure the advancement of justice, the determining the real matter in dispute, and the giving of judgment according to the very right and justice of the case.

**184.** Non-compliance with the Rules shall not render the writ or any act or proceeding void, but the same may be set aside, either wholly or in part, as irregular, or may be amended, or otherwise dealt with, as may seem just.

**185.** An application to set aside any proceeding for irregularity shall be made within a reasonable time, and shall not be allowed if the party applying has taken a fresh step after knowledge of the irregularity.

**186.** Where an amendment is directed or allowed at the trial, it shall not be necessary to issue an order therefor. The amendment, unless otherwise directed, shall at once be made on the record.

**187.** Where an amendment of any record of the Court or document filed, other than a pleading, is directed, no physical alteration of the record or document shall be made, but a note shall be made, in the margin or other convenient place, of the amendment directed.

#### (ii) *Form of Documents, Size of Paper, etc.*

**188.**—(1) All pleadings, affidavits, judgments, orders and other documents shall be printed, typewritten, or written in a clear and legible manner, with a margin upon the left-hand side, upon foolscap paper of good quality.

(2) When documents are printed, pica type, leaded, shall be used.

(3) Every document filed shall be endorsed with the title of the action or matter, with the nature of the document and the name of the solicitor preparing or filing it.

**189.** No notice shall be given orally.

**190.**—(1) In all proceedings in an action, except the writ of summons, pleadings, judgments and reports, the following short style of cause shall be sufficient:

"Between John Smith and others,—*Plaintiffs*,  
and  
Richard Roe and others,—*Defendants*."

(2) In case of proceedings which it has been the practice to entitle more shortly thus: "Smith *v.* Roe," such practice shall continue.

(3) In proceedings under any particular Act (e.g., *The Mechanics' Lien Act*), the style of cause shall be "In the matter of—(naming the statute), "Between A.B., Plaintiff, and C.D., Defendant" (or "A.B., Applicant" and C.D. Respondent").

(iii) *Copies and Service of Papers*

**191.** Where service of affidavits and other documents is required, true copies, legibly written, typewritten, or printed, are to be served.

**192.** Where an office copy of an order or judgment is directed to be served it shall be certified by the officer in whose office the order or judgment is entered.

**193.** A party requiring a copy of any affidavit, exhibit, or document not directed to be served shall serve a demand for the same and a copy shall be served with all convenient speed.

**194.** A party entitled to copies of or extracts from any document in possession of another party, may be directed to pay for such copy at the rate of 10 cents per folio, if the request for such copy is deemed unreasonable, or the solicitor of the party producing the document shall be at liberty to give notice that the party requiring such copy is at liberty at some reasonable time and place himself to make it, in which case the party producing shall not be entitled to any fee in respect thereof.

**195.** A book to be called "The Toronto Solicitors' and Agents' Book," shall be kept in the Central Office to be there inspected by any party or solicitor or his clerk without fee; and every solicitor having an office or carrying on his business within the said city, shall cause to be entered in such book (in alphabetical order) his name and place of business or some other proper place within the city where he may be served, and as often as any such solicitor changes his place of business or the place where he may be so served as aforesaid, he shall cause to be made the like entry thereof in the said book.

**196.** Every other practising solicitor shall cause to be entered in the said book (in alphabetical order) his name and place of business, and also in an opposite column the name of some solicitor having an office and carrying on business in the city of Toronto as his agent.

**197.** Every Deputy or Local Registrar shall keep in his office a book to be called "The County Solicitors' and Agents' Book," in which each solicitor residing within the County elsewhere than in the County Town, and not having an office there, shall specify the name of an agent, being a solicitor of the Supreme Court, and having an office in such County Town, as his agent with respect to business carried on in the local offices in the said town.

**198.** Admissions and acceptances of the service of an order, notice of motion or other paper, upon the opposite solicitor, need not be verified by affidavit.

**199.**—(1) Documents which do not require personal service shall be served upon the solicitor of the party to be served or his agent entered in the Toronto or County "Solicitors' and Agents' Book."

(2) Such service may be made by leaving the document to be served with any clerk in the solicitor's or agent's office.

(3) Where a solicitor has not caused an entry to be made, as required by Rules 195 and 197, he may be served by posting up a copy of the document in the Central Office or in the Office of the Local Registrar of the county in which he resides.

**200.**—(1) Where a party sues or defends in person and no address for service of such party is given, or where a party has ceased to have a solicitor, or where a defendant served with a writ of summons or notice in lieu thereof has not appeared thereto, all documents not requiring personal service shall, unless the Court otherwise directs, be deemed to be sufficiently served by posting up a copy in the office in which the proceedings are being carried on.

(2) If an address for service is given, then all documents shall be sufficiently served upon such party if left for him at such address.

**201.** Where at the time of attendance to serve any document, the office of the solicitor for the party upon whom the service is sought to be made is closed or no one is in attendance therein for receiving documents served, service of the document may be effected by mailing the same, at any time during the same day, addressed to the solicitor, at his office, by registered post, and the service shall be deemed to have been effected at the time of the attendance for that purpose at the office of the solicitor.

**202.** Service upon an execution creditor may be effected by serving the solicitor issuing the execution.

**203.** It shall not be necessary to regular service that the original document shall be shown, unless sight thereof is demanded.

**204.** Service shall, unless otherwise ordered, be effected during vacation and on Saturdays before one o'clock in the afternoon, and on other days before the hour of four o'clock in the afternoon, and service effected after those hours shall be deemed to have been made on the next juridical day.

## CHAPTER XI

### MOTIONS IN COURT AND CHAMBERS

**205.** Any power conferred upon the Court by any statute or by law may be exercised by a Judge sitting in Court, and, when so provided by the Rules, by a Judge in Chambers, or the Master, or a Local Judge in Chambers, or any Master or Referee to whom any cause or matter is referred.

**206.** Any power conferred upon the Court may be exercised upon such terms as to costs and otherwise as may be deemed just.

**207.** The following applications shall be disposed of in Chambers:

1. For the sale, lease or mortgaging of the estates of infants.
2. As to the custody, guardianship, maintenance, and advancement of infants.

3. For administration or partition without action.
4. Relating to the conduct of actions or matters.
5. For the payment into Court of moneys under *The Trustee Act*.
- ~~6. To vacate certificates of *lis pendens*.~~
7. Appeals from the Master in Chambers and Local Judge.
8. Motions for judgment under Rules 57 to 62.
9. Applications under *The Lunacy Act*.
10. Applications for and on the return of a writ of *Habeas Corpus*.
11. Motions for mandamus, prohibition, or interpleader.
12. Motions to wind up companies under the Dominion and Ontario Acts.
13. Motions for payment of money out of Court.
14. Originating motions under Rule 600, clauses (c), (d), (f) and (i).
15. Motions under any statute which authorizes an application to a judge.

**208.** The Master is empowered and required to dispose of all applications properly made in Chambers save in respect to the following matters:

1. Matters relating to criminal proceedings, or the liberty of the subject.
2. Appeals and applications in the nature of Appeals.
3. Extending the time for appealing to a Divisional Court of the Appellate Division.
4. Applications for arrest.
5. Proceedings as to lunatics.
6. Originating notices other than applications for administration, partition or interpleader.

7. Applications as to the custody, maintenance or guardianship of infants, or the sale, lease, mortgage of or dealing with infants' estates or settled estates.
8. Opposed applications for judgment for partition or administration.
9. Applications for Prohibition or Mandamus.
10. The payment of money out of Court, or dispensing with payment of money into Court, in administration and partition matters.
11. Allowing taxed costs in lieu of commission under the provisions of Rule 653.
12. Striking out a jury notice except for irregularity.
13. Any matter which is expressly required to be done by a Judge.
14. The removal of causes from Inferior Courts.
15. The making of orders for references under *The Arbitration Act.*
16. Staying proceedings after verdict, or judgment at a trial.

*Local Judges and Local Masters*

**209.** A Local Judge and a Local Master who does not practise as a Barrister or Solicitor or take out a certificate entitling him to practise shall, in all causes and matters in his county and in interpleader proceedings where the goods in respect of which interpleader is sought are situate in his county, have concurrent jurisdiction with, and the same power and authority, as the Master at Toronto.

**210.**—(1) A Local Judge shall, in actions brought in his county, possess the like powers as a Judge sitting in Court or Chambers with regard to:

- (a) Motions for judgment in undefended actions.
- (b) Motions to appoint receivers after judgment by way of equitable execution.
- (c) Applications for leave to serve short notice of a motion to be made before a Judge sitting in Court or Chambers.

And where the solicitors for all parties reside in his county or agree that the same shall be heard before him any motion or application except:

- (i) Applications for taxed or increased costs under Rule 653.
- (ii) Motions for injunction, save as provided in Rule 211.
- (iii) Motions to strike out a jury notice save for irregularity.
- (2) Where an infant or lunatic or person of unsound mind is concerned the powers conferred by this Rule shall not be exercised without the consent of the Official Guardian, or of the committee or guardian of or the person authorized to act on behalf of the lunatic or person of unsound mind.

**211.**—(1) A Local Judge may in cases of emergency grant an *ex-parte* injunction in any action brought in his county upon proof to his satisfaction that the delay required for an application to a Judge is likely to involve a failure of justice, but such injunction shall not be for a longer period than eight days.

(2) If all parties interested consent, the Local Judge may hear any motion to continue, vary or dissolve the injunction.

**212.** Motions for partition or administration may be made before a Judge in Chambers or the local Judge of the County where the land (or if more than one parcel, any parcel) is situate or the testator or intestate died.

#### *General Provisions as to Motions*

**213.** Any application in an action or proceeding shall be made by motion, and unless the nature of the application or the circumstances of the case render it impracticable notice of the motion shall be given to all parties affected by the order sought. (Forms Nos. 34 and 35.)

**214.** If on the hearing of a motion it appears that any person to whom notice has not been given ought to have had notice, the Court may either dismiss the motion or adjourn the hearing thereof in order that notice may be given.

**215.**—(1) Except where otherwise expressly provided unless leave is given there shall be at least two days between the service of a notice of motion in an action and the day for hearing.

(2) Unless leave is given there shall be at least seven days between the service of an originating notice and the day for hearing.

**216.** If satisfied that the delay necessary to give notice of motion might entail serious mischief, the Court may make an interim order *ex parte*.

**217.** A party affected by an *ex parte* order, or any party who has failed to appear on an application through accident or mistake, or insufficient notice of the application, may move to rescind or vary the order before the Judge or officer who made the same, or any Judge or officer having jurisdiction, within four days from the time when the order comes to his notice.

**218.** Every notice of motion by way of appeal shall specify the grounds intended to be argued.

**219.** A notice of motion to set aside a proceeding for irregularity shall specify the irregularity complained of and the objections intended to be insisted on.

**220.** The Court may direct any application to be turned into a motion for judgment.

**221.** When upon an application for an interim injunction or upon any other motion it appears expedient to direct an early trial, the Court may make such order as may be deemed necessary to secure an early hearing, either at the place named for trial or such other place as may be convenient.

**222.** A party may, at any stage of an action, apply for such judgment or order as he may, upon any admissions of fact in the pleadings, or in the examination of any other party, be entitled to; and it shall not be necessary to wait for the determination of any other question between the parties; or he may so apply where the only evidence consists of documents and such affidavits as are necessary to prove their execution or identity without the necessity of any cross-examination, or where infants are concerned, and evidence is necessary so far only as they are concerned, for the purpose of proving facts which are not disputed.

**223.—(1)** The Court may adjourn for consideration in Chambers any motion or matter brought before it which should have been brought on in Chambers or which, though properly brought on in Court, may, in the opinion of the Court, be disposed of more conveniently in Chambers; and any motion or matter brought on in Chambers which should have been brought on in Court may be adjourned into Court.

*move before  
judg't in  
Court*

(2) Any motion or matter improperly brought before the Master or a Local Judge may be adjourned by him before the Court or a Judge in Chambers.

**224.** Where an infant or lunatic is a defendant or interested in a fund in Court, no order in any way affecting his interest shall be made without notice to his guardian *ad litem* or committee.

**225.**—(1) An attendance on a motion in Chambers, or on an appointment before a Master, Registrar, or other officer, for half an hour next immediately following the return thereof, shall be deemed a sufficient attendance, and no such motion shall be made or matter be proceeded with *ex parte*, before the expiry of such half-hour.

(2) Notwithstanding the provisions of this Rule the Taxing Office at Toronto may proceed *ex parte* after the expiration of fifteen minutes from the time appointed.

**226.** Evidence upon a motion may be given by affidavit.

**227.** A person who has made an affidavit to be used upon a motion or at a trial or on a reference, may be cross-examined thereon, before any officer having jurisdiction in the county in which the witness resides, upon being served with a subpoena for that purpose.

**228.** Any party may by subpoena require the attendance of a witness to be examined, before any officer having jurisdiction in the county in which the witness resides, for the purpose of using his evidence upon any motion.

**229.** Witnesses may by leave of the Court be examined *viva voce* before the Court upon any motion.

**230.** The Court may order the issue of a Writ of *Habeas Corpus ad testificandum* to issue directed to the sheriff, gaoler, or other officer having the custody of any prisoner, to produce him for any examination authorized by these Rules or as a witness at a trial. (Form No. 53.)

**231.** Where money is directed to be paid into a Bank, the certificate of the cashier, manager, agent, or like officer of the Bank, of default in making such payment, shall be sufficient evidence of such default.

**232.**—(1) On all appeals, or hearings in the nature of appeals, and on all motions for a new trial, the Court or Judge appealed to shall have all the powers as to amendment and otherwise of the Court, Judge or officer appealed from,

and full discretionary power to receive further evidence, either by affidavit, oral examination before the Court or Judge appealed to, or as may be directed.

(2) Such further evidence may be given without special leave as to matters which have occurred after the date of the judgment, order or decision from which the appeal is brought.

(3) Upon appeals from a judgment at the trial, such further evidence (save as mentioned in subsection (2)) shall be admitted on special grounds only, and not without leave of the Court.

**233.** Upon any motion the Court shall have power to direct the trial of an issue upon oral evidence and may enlarge the motion before the Judge at the trial of the issue.

**234.**—(1) A Judge shall sit in Chambers on Tuesday and Friday, and in Court on Monday, Wednesday and Thursday in each week, except in vacation, when a sitting shall be held on one day in each week to dispose of urgent business.

(2) All papers for use in the Court or Chambers at Toronto shall be filed in the Registrar's Office, and when no longer required all such papers and all papers forwarded for use on the motion shall be transmitted to the office in which the proceedings were commenced.

(3) Motions and other matters to be heard in Court, except *ex parte* applications, shall be set down for argument, in the Registrar's Office, at least on the day before the day of argument, and a list of the cases set down shall be posted on the notice board the day before the day for which the same are set down.

(4) All papers to be used on a motion to be heard by a Judge in Chambers shall be left with the Registrar on the day before that on which the motion is to be heard, and shall be marked with the name of the office where the proceedings were commenced.

(5) All documents sent from local offices to Toronto shall be sent to The Central Office, postage or express charges prepaid, and the necessary return postage or express charge shall be transmitted therewith.

(6) Unless otherwise directed by the Judge, *ex parte* and unopposed motions in Chambers shall be heard before contested motions and appeals.

**239.** Sittings shall be held at Ottawa and London on at least one day in each week, except during vacation; and all proceedings in any action or matter which may be heard before a Judge may be heard and determined at such sittings:

- (a) Where the motion is *ex parte*;
- (b) Where the solicitors for all parties reside in the county in which the sittings are held;
- (c) Where such solicitors who do not so reside consent to the proceeding being heard at such sittings, or register their names in the book to be kept as hereinafter provided; or
- (d) Where a Judge directs any proceedings to be heard at such sittings.

**240.** The Deputy Clerk of the Crown at London, and the Local Registrar at Ottawa shall act as registrar and clerk of the Court.

**241.** All proceedings to be brought on at any such sittings shall be entered for that purpose with the Clerk of the Court on or previously to the day next but one before the day appointed for the sittings; and it shall be the duty of the Clerk immediately after the time for entry has expired to telegraph the Senior Registrar at Toronto, advising him what business has been so entered, and the Registrar shall forthwith inform the Judge appointed to attend at such sittings; and if no business has been so entered it shall not be necessary for any Judge to attend.

**242.** Where the Judge appointed is unable to attend, such sittings may be presided over by any other Judge or by a Judge of any County Court, upon such Judge of a County Court being requested by a Judge to attend for that purpose.

**243.**—(1) Any solicitor may file with the Clerk of the Court at the place of such sittings a request to the effect following:—

I, \_\_\_\_\_ desire to be registered as consenting to the hearing and disposal at the sittings at Ottawa (or London as the case may be) of all proceedings in which I may be acting as solicitor.

(2) A book to be called "The Consent Register," which shall be open to inspection by any solicitor or his clerk without fee, shall be kept by the Deputy Clerk of the Crown at London and the Local Registrar at Ottawa respectively, wherein shall be recorded such requests and the names of the local agents (if any) of the solicitors filing the request.

(3) A solicitor who files such request may at any time withdraw the same by giving to the same officer notice in writing to that effect, and the Deputy Clerk or Local Registrar upon receiving such notice shall forthwith make any entry thereof in the said book.

**244.**—(1) At any sittings appointed for the trial of actions any motion which may be made before a Judge in court or in Chambers may be made if,—

- (a) The solicitors for all parties consent; or
- (b) The matter in controversy arose in the county; or
- (c) The party opposing or showing cause or his solicitor resides in the county;
- (d) The application relates to any action entered for trial at the sittings;

(2) Such motion shall be set down two days **before** the sittings unless the judge presiding permits it to be set down later.

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## CHAPTER XII

### TRIALS

**245.**—(1) Subject to any special statutory provisions the place of trial of an action shall be regulated as follows,—

- (a) The plaintiff shall, in his statement of claim, name the county town at which he proposes that the action shall be tried;
- (b) Where the cause of action arose and the parties reside in the same county the place to be named shall be the county town of that county;
- (c) Save in mortgage actions, where possession of land is claimed, the place to be named shall be the county town of the county in which the land is situate;
- (d) The action shall be tried at the place so named, unless otherwise ordered upon the application of either party.

**246.** After the close of the pleadings either party may give notice of trial (Form No. 32).

**247.** Where interlocutory judgment has been signed against any defendant for default of appearance or pleading, notice of assessment of damages shall be given to him by personal service unless substituted service is permitted, and proof of service shall be filed when the action is set down.

**248.** Except in actions to be tried at Toronto, without a jury,—

- (a) Notice of trial or of assessment of damages shall be served ten days before the day fixed for the commencement of the sittings and before entering an action for trial;
- (b) After notice of trial is given, either party may enter the action for trial, and if both parties enter the action for trial at the same sittings it shall be tried in the order of the plaintiff's entry;
- (c) Actions shall be entered for trial not later than the sixth day before the commencement of the sittings; but a Judge may permit any action in which notice of trial or of assessment of damages has been duly served to be entered after the time above limited;
- (d) An action which is to be tried without a jury may be entered for trial at any sittings appointed for the place named for the trial of such action.

**249.**—(1) The party entering an action for trial shall, at the time of entry (or, in the cases to which Rule 250 applies, at or before the time when the notice of trial is to be filed), deposit a record containing a certified copy of the pleadings and particulars and of any order containing directions respecting the trial.

(2) Such record shall contain the full style of cause, and shall show the date when the writ was issued, and shall give the names of the solicitors for the several parties, and shall show that judgment has been signed or the pleadings have been noted as closed as against any parties in default.

NOTE—*Where there is a jury notice, a copy shall be attached to the record—The Judicature Act, sec. 57 (2).*

**250.**—(1) Actions in the Supreme Court to be tried at Toronto without a jury may be set down for trial by either party immediately after the close of the pleadings.

(2) Notice of trial or of assessment of damages (Form No. 33) shall be given, by the party setting down the action within two days thereafter, and he shall within four days after so setting down the action, file the notice of trial or of assessment of damages and proof of the service thereof, with the officer with whom the action was set down.

(3) Where default is made in filing the notice of trial, any party who has been served therewith may within four days after such default, file in like manner the notice of trial served on him and proof of the service thereof.

(4) Where a notice of trial is filed, the action shall be placed upon the list of cases for trial upon the expiration of three weeks from the date of the setting down.

(5) If two or more parties have entered the action for trial, it shall be tried in the order of the first entry.

(6) In actions in the county court of the County of York to be tried without a jury, notice of trial shall be given and the action entered for trial in accordance with the provisions of Rule 248, but if the action is not tried or disposed of at the sittings for which it is entered for trial it shall be placed upon the list for the next sittings, and it shall not be necessary to give fresh notice of trial or re-enter the action notwithstanding the provisions of Rule 252.

**251.** An action may be withdrawn from trial, upon consent.

*remainder*

**252.** Actions not tried or disposed of after being once entered for trial shall not, except in the case of actions entered for trial without a jury at Toronto, be heard at any subsequent sittings unless a fresh notice of trial is given and the action has been again set down, but no fee shall be payable for such setting down.

**253.** If, when an action is called on for trial, the defendant appears, and the plaintiff does not, the defendant shall be entitled to judgment dismissing the action, and if he has a counter-claim may prove such claim.

**254.** The Judge at the trial shall, at the request of either party, order a witness to be excluded from the court until he is called to give evidence, and also, if the Judge deems it expedient, a party intending to give evidence; or he may require such party to be examined before the other witnesses on his behalf, and the judge may, in his discretion, exclude the testimony of any witness or party who does not conform to such order.

**255.** The Judge may in all cases disallow any question put to a witness which may appear to the Judge to be vexatious and not relevant to any matter proper to be enquired into at the trial.

**256.**—(1) At the trial, the addresses to the jury shall be regulated as follows,—

(a) At the conclusion of the case of the party who begins, if the opposite party states his intention to be not to adduce evidence, and he has not adduced evidence, the party who begins shall have the right to address the jury for the purpose of summing up the evidence, and the opposite party shall have the right to reply;

(b) If the opposite party does not state his intention to be not to adduce evidence, or if he has adduced evidence, he shall have the right to open his case, and (after the conclusion of such opening), to adduce such evidence as he thinks fit, and when all the evidence is concluded, to sum up the evidence, and the party who begins shall have the right to reply;

(2) Where a defendant claims a remedy over against a co-defendant, he shall have the right to address the jury after the co-defendant.

(3) Where a party is represented by counsel, the right conferred by this Rule shall be exercised by his counsel.

✓ **257.** Where, through accident or mistake or other cause, a party omits or fails to prove some fact material to his case, the Judge may proceed with the trial, subject to such fact being afterwards proved at such time as the Judge shall direct; and, if the case is being tried by a jury, the Judge may direct the jury to find a verdict as if such fact had been proved, and the verdict shall take effect on such fact being afterwards proved as directed; and if not so proved, judgment shall be entered for the opposite party, unless the Judge otherwise directs, but this Rule shall not apply to an action for defamation.

**258.** Where equitable issues are raised by the pleadings, they shall, unless the trial Judge otherwise directs, be tried, and the damages, if any, incidental thereto, assessed by the Judge without the intervention of a jury.

**259.** Where both legal and equitable issues are raised, and notice for a jury has been given, the action shall be entered for trial at the jury sittings, and such issues shall be tried at the same time, unless the Judge presiding at the trial otherwise directs.

**260.** Damages in respect of any continuing cause of action shall be assessed down to the time of the assessment.

**261.** A party shall not be entitled to judgment at the trial or on motion on the ground of his pleading being true, if the facts proved are not sufficient in point of law to entitle him to judgment.

**262.** If in an action to recover land the plaintiff is, at the time of the service of the writ, entitled to possession, but his right afterwards expires, he may by leave discontinue the action, and the costs shall be in the discretion of the Court.

**263.**—(1) Exhibits shall be marked and numbered in accordance with Form No. 128, and the Registrar attending the trial shall, at the conclusion thereof, make a list of the exhibits, giving a description of each exhibit, and stating by whom it was put in. (Form No. 129). The exhibits of each party shall be classified separately in such list.

(2) The exhibits shall remain in Court until judgment is given and during any stay of proceedings, and thereafter shall be delivered out, without order, upon the application of either party upon notice to the other, unless an appeal is taken, when the exhibits shall be retained until the appeal is disposed of.

**264.** Where exhibits have not been applied for within two years from the date of a trial the officer in whose custody they are, may notify the solicitors for the parties that unless they are applied for in three months they will be destroyed, and unless such exhibits are applied for within that period he may by leave of a Judge destroy them.

**265.** The verdict and judgment shall be indorsed on the Record, and shall also be recorded by the Registrar or officer acting as clerk at the sittings in a book to be kept for recording the proceedings thereat.

**266.** The Judge by whom any cause or matter is tried with or without a jury, and the Court before which any cause or matter is brought by way of appeal, may inspect any property or thing concerning which any question arises therein, and where the sanity of a party is in question, may examine him for the purpose of determining his sanity.

**267.** A view by the jury may be ordered by the Judge presiding at the trial.

**268.**—(1) The Court may obtain the assistance of merchants, engineers, accountants, actuaries, or scientific persons, in such way as it thinks fit, the better to enable it to determine any matter of fact in question in any cause or proceeding, and may act on the certificate of such persons.

(2) The Court may fix the remuneration of any such person and may direct payment thereof by any of the parties.

(3) Unless all parties are *sui juris* and consent, the powers conferred by this Rule shall only be exercised by or by leave of a Judge.

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## CHAPTER XIII

### EVIDENCE

**269.** The witnesses at the trial of an action or an assessment of damages shall be examined *viv<sup>d</sup> voce* and in open Court, but a Judge may at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the trial, on such conditions as he may deem just, or that any witness whose attendance ought for some sufficient cause to be dispensed with, be examined before an examiner; but where the other party *bona fide* desires the production of a witness for cross-examination, and such witness can be produced, an order shall not be made authorizing his evidence to be given by affidavit.

**270.** All witnesses in any matter pending before a Master, shall be examined *viv<sup>d</sup> voce*, unless it is otherwise ordered by the Master or by the Court on special grounds.

**271.** The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order for the examination upon oath before an officer of the Court or any other person and at any place, of any person, and may permit such deposition to be given in evidence. (Form No. 71).

**272.** Service of any notice may, in the absence of an admission of service, be proved by an affidavit of the solicitor in the cause, or his clerk.

**273.** A subpoena may be issued at any time in blank and may be completed by the solicitor or party, and any number of names may be inserted in one subpoena. (Forms Nos. 51 and 52).

**274.**—(1) No subpoena for the production of an original record, or of an original document from any registry office, shall be issued, but an order for its production or transmission may be made which shall be obeyed by the officer in whose custody it is.

(2) Except in special circumstances requiring or justifying the production of the original, no such order shall be made where the document may be proved by a certified copy. Any officer required to produce a document shall be entitled to be paid ordinary witness fees.

✓ **275.** A party who desires to call as a witness at the trial an opposite party who is within the jurisdiction may either subpoena him or give him or his solicitor at least five days' notice of the intention to examine him as a witness in the cause, paying at the same time the amount proper for conduct money; and if such opposite party does not attend on such notice or subpoena judgment may be pronounced against him, or the trial of the action may be postponed.

✓ **276.**—(1) Upon proof to the satisfaction of the presiding Judge of the service of a subpoena upon any witness who fails to attend or to remain in attendance in accordance with the requirements of the subpoena, and that a sufficient sum for his fees as a witness has been duly paid or tendered to him, and that the presence of such witness is material to the ends of justice, the Judge may by his warrant (Form No. 54), directed to any sheriff or other officer of the Court, or to any constable, cause such witness to be apprehended anywhere within Ontario, and forthwith to be brought before the Court and to be detained in custody as the presiding Judge may order, until his presence as such witness is no longer required, or, in the discretion of the Judge, to be released on a recognizance (with or without sureties) conditioned for appearance to give evidence.

✓ (2) The service of the subpoena and payment of conduct money may be proved by an affidavit.

✓ **277.** Where the testimony of a person who is residing out of Ontario is required and for any reason an order under Rule 271 is not sufficient the Court may order the issue of a commission for the examination of such person. (Form of Order No. 68, of Commission No. 55).

**278.** If a party for whose examination an order has been made or a commission has issued, refuses to attend before the examiner or Commissioner, judgment may pass against him.

**279.** The notice of a motion for a commission to take evidence shall state the name and address of the commissioner proposed.

**280.**—(1) Unless otherwise directed the examination shall be upon oral questions to be reduced into writing and returned with the commission; and notice of the execution of the commission shall be given to the opposite party, if, within the time prescribed by the order, he gives the name and the address of a person resident within two miles of the place where the commission is to be executed, on whom such notice may be served.

(2) If no agent is named or the name or address given proves to be illusory or fictitious, or if the party so notified fails to attend pursuant to the notice, the commission may be executed *ex parte*.

**281.** Where the examination is to take place upon written interrogatories, the interrogatories in chief shall be delivered to the opposite party eight days before the issue of the commission; and the cross-interrogatories shall be delivered to the opposite party within four days after the receipt of the interrogatories in chief; and in default of cross-interrogatories being so delivered, the commission may be executed without cross-interrogatories.

**282.** The witnesses shall be examined on oath, affirmation, or otherwise in accordance with the law of the country in which the commission is executed.

**283.** Where a witness does not understand the English language the commission shall be executed with the aid of an interpreter nominated by the commissioner, and sworn to interpret truly the questions to be put to the witness and his answers thereto, and the examination shall be taken in English.

**284.** If a witness produces a book, document, letter, paper or writing, and refuses for good cause, to be stated in his deposition, to part with the original, a copy or extract certified by the commissioner shall be annexed to the deposition of the witness.

**285.** The depositions may be taken in shorthand either by the commissioner or a shorthand writer duly sworn.

**286.**—(1) Unless the examination is taken in shorthand the depositions shall be subscribed by the witness and by the commissioner.

(2) Where taken in shorthand it shall not be necessary that the depositions be read over or signed by the person examined unless counsel attending on the Commission so desires.

**287.** The commission, interrogatories, depositions and any documents or certified copies thereof or extracts therefrom, referred to therein, shall be sent to the proper officer, on or before the day named in the order for the commission, enclosed in a cover under the seal of the commissioner; and the same or certified copies thereof may be given in evidence, saving all just exceptions, without any other proof of the absence from Ontario of the witness therein named than an affidavit of the solicitor or agent of the party as to his belief of such absence.

**288.** Where the opposite party desires to join in the commission and examine witnesses on his own behalf thereunder, each party shall in the first instance pay the costs of the commission consequent upon the examination of his witnesses.

**289.** A commission when returned shall at the request of either party be transmitted for use at the trial, and may be opened at the trial, or before trial at the instance of either party by the officer to whom it is returned on two clear days' notice to the other party.

**290.** Every order for a commission shall be read as if it contained the particulars mentioned in the next preceding ten rules, and shall not set forth the same, but may contain any variations therefrom, and any other directions, which the Court sees fit to make.

**291.** An affidavit shall be drawn up in the first person, stating the name of the deponent in full, and his description and true place of abode, and shall be signed by him.

**292.** In an affidavit made by two or more deponents the names of the persons making the affidavit shall be inserted in the jurat, unless the affidavit of all the deponents is taken at one time by the same officer, in which case it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

**293.** Affidavits shall be confined to the statement of facts within the knowledge of the deponent, but on interlocutory motions statements as to his belief, with the grounds thereof, may be admitted.

**294.** In an action or proceeding to which a corporation is a party, any affidavit required by these Rules to be made by a party may be made by any officer, servant, or agent of the corporation having knowledge of the facts required to be deposed to, and he shall state therein that he has such knowledge.

**295.** An affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall not be used without leave unless the interlineation, alteration or erasure is authenticated by the initials of the officer taking the affidavit.

**296.** Where an affidavit is sworn by a person who appears to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, who seemed perfectly to understand it, and signed it in his presence; otherwise such affidavit shall not be used without leave.

**297.** An affidavit sworn before the solicitor of the party on whose behalf it is made, or before the clerk or partner of such solicitor, shall not be used; but this Rule shall not extend to an affidavit to obtain an order for arrest.

**298.** Affidavits upon which a notice of motion is founded shall be filed before the service of the notice of motion and all other affidavits shall be filed before they are used.

**299.** Where properly marked exhibits are referred to in an affidavit filed, and are not annexed thereto, such exhibits need not be filed, but shall be left for the use of the Court, and shall be handed out on the disposal of the motion unless otherwise ordered.

## CHAPTER XIV

### PARTICULAR PROCEEDINGS IN ACTIONS

#### (i) *Transmission of Interest*

**300.** If by reason of death (when the cause of action survives or continues) or by assignment or conveyance any estate, interest or title devolves or is transferred the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

**301.** Where a change or transmission of interest or liability has taken place or where by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any

person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and the new party may be obtained on *praecipe*. (Form No. 57.)

**302.** Such order and a notice according to Form No. 58 shall be served upon the continuing parties or their solicitors, and upon the new party.

**303.** A person served with such order may apply to the Court to discharge or vary the order at any time within 10 days from the service thereof.

**304.** When death takes place after verdict or finding of the issues of fact but before judgment, judgment may be entered notwithstanding the death, whether the cause of action would, apart from this rule, survive or not.

**305.** Where a plaintiff has died and proceedings may be continued, the defendant may apply to the court on notice to compel the person entitled to proceed with the action to proceed according to the provisions of these Rules within such time as the Court may order, and that in default the action be dismissed for want of prosecution.

**306.** Where an action is so dismissed an order for payment of costs may be made and enforced against the goods and lands which were of the deceased plaintiff.

(ii) *Payment into Court with a Pleading, in Satisfaction*

**307.** A defendant may, either before or at the time of delivering his defence, or afterwards by leave of the Court, pay into Court a sum of money in satisfaction of the cause or a part of the cause of action, or of one or more of the causes of action for which the plaintiff sues, and the money when so paid in shall remain in Court subject to further order unless the plaintiff elects to take it out as hereinafter provided. (Form No. 24.)

**308.** Payment of money into Court shall not, unless expressly so stated, be deemed an admission of the cause of action in respect of which it is paid. That money has been paid into Court shall not be mentioned to the jury.

**309.** With a defence setting up a tender before action, the sum alleged to have been tendered shall be brought into Court.

**310.** Payment into Court shall be pleaded, and in the pleading the cause of action or part thereof in respect of which the payment is made shall be specified.

**311.** A defendant paying money into Court before delivering his defence shall serve upon the plaintiff a notice stating that he has paid in the money, and specifying the claim or cause of action in respect of which the payment has been made.

**312.** The plaintiff may take the money out of Court in satisfaction of the cause of action, or part thereof, in respect of which it was paid in, upon filing and serving a memorandum (Form No. 25), which shall be equivalent to a satisfaction piece.

**313.** The plaintiff shall make his election to take the money out of Court within four days after the day on which he receives notice of payment in if the payment is made before defence, and if the money is paid in with the defence he shall elect before the expiration of the time for replying, and before replying.

**314.** Where the defendant does not allege tender before action and the plaintiff takes the money in satisfaction of all the causes of action he may tax his costs of the action, and issue execution therefor, unless the defendant pays them within forty-eight hours after taxation.

**315.** Where the defendant alleges tender before action and the plaintiff elects to take the money in satisfaction unless otherwise ordered the defendant may tax his costs and the amount allowed him shall be paid to him out of the money in Court and the balance shall be paid to the plaintiff.

**316.**—(1) Where money is paid into Court and liability is not admitted and the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, the money shall remain in Court and be subject to the order of the Court and shall not be paid out of Court except in pursuance of an order or upon the consent of both parties.

(2) If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into Court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall be repaid to the defendant, but if the defendant succeeds in respect of such claim or cause of action, the whole amount shall be repaid to him.

**317.** A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant.

**318.** A defendant paying money into Court shall in his *praeceipe* state the rule under which he is paying it in.

**319.** Money accepted by the plaintiff in satisfaction may be paid out to him without order, upon the pleadings and notice of acceptance being transmitted to the Accountant, who shall return the same to the proper office after having made the necessary entries in his books.

(iii) *Consolidation of Actions*

**320.** Actions may be consolidated by order of the Court.

(iv) *Discontinuance*

**321.**—(1) The plaintiff may, at any time before receipt of the statement of defence of any defendant, or after the receipt thereof before taking any other proceeding in the action (save an interlocutory application), by notice in writing, filed and served, wholly discontinue his action against such defendant or withdraw any part thereof; and the defendant shall be entitled to the costs of the action, if wholly discontinued against him, or if not wholly discontinued to the costs occasioned by the part withdrawn. (Form No. 28.)

(2) A plaintiff may discontinue as to one or more of several defendants.

(3) Such costs may be taxed upon production of the notice served, and if not paid within four days from taxation the defendant may issue execution therefor.

(4) Such discontinuance or withdrawal shall not be a defence to any subsequent action.

(5) Except as provided by the preceding subsections a plaintiff shall not discontinue without leave of the Court, which may be granted upon such terms as to costs and as to any other action against all or any of the defendants and otherwise as may be proper.

**322.** A defendant may withdraw his defence or any part thereof, by written notice filed and served.

(v) *Dismissal of Actions for want of Prosecution*

**323.** If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, at the expiration of such time the action may be dismissed for want of prosecution.

**324.** In actions to be tried without a jury at Toronto, if the plaintiff does not set down the action for trial within six weeks after the pleadings are closed and proceed to trial as provided in Rule 250 the action may be dismissed for want of prosecution.

**325.**—(1) In all other actions if the pleadings are closed six weeks before the commencement of any sittings for which the plaintiff might give notice of trial, and he does not give notice of trial therefor and enter the action for trial, the action may be dismissed for want of prosecution.

(2) Where there are separate sittings for the trial of actions with and without a jury the plaintiff shall not be considered in default for failure to enter a non-jury action at the jury sittings. (Form of Order, No. 66).

**326.**—(1) When an action has been discontinued or dismissed for want of prosecution a defendant who has counter-claimed may, if he so elects, proceed with the trial of his counter-claim, and if he elects to proceed he shall give notice of his election within 10 days after the discontinuance or dismissal of the action, and the counter-claim shall then be liable to dismissal for want of prosecution for failure to proceed to trial; or the defendant may if he so elects discontinue his counter-claim in whole or in part, and the defendant by counter-claim shall then be entitled to the costs of the counter-claim if wholly discontinued, or if not wholly discontinued to the costs occasioned by the part withdrawn, and the provisions of Rule 321, (2), (3) and (4) shall, *mutatis mutandis*, apply.

(2) In default of such election the counter-claim shall on the discontinuance or dismissal of the action be regarded as dismissed without costs.

(vi) *Examination for Discovery*

**327.**—(1) A party to an action whether plaintiff or defendant, may, without order, be orally examined before the trial touching the matters in question by any party adverse in interest, and may be compelled to attend and testify in the same manner, upon the same terms, and subject to the same rules of examination as a witness except as hereinafter provided.

(2) In the case of a Corporation any officer or servant of such Corporation may, without order, be orally examined before the trial touching the matters in question by any party adverse in interest to the Corporation, and may be compelled to attend and testify in the same manner and upon the same terms and subject to the same rules of examination as a witness except as hereinafter provided; but such examination shall not be used as evidence at the trial. *(and, however, as against individual examined)*

(3) After the examination of an officer or servant of a Corporation a party shall not be at liberty to examine any other officer or servant without an order.

**328.** Where a party to be examined is out of Ontario the Court may order the examination to be taken at such place and in such manner as may seem just and convenient, and service of the order and of all papers necessary to obtain the examination may be made on the solicitor of the party, and any conduct money may be paid to him unless the order makes other provisions therefor.

**329.** The Court may order the examination for discovery at such place and in such manner as may be deemed just and convenient of an officer residing out of Ontario of any Corporation party to an action, and service of the order and of all papers necessary to obtain such examination may be made upon the solicitor for such party, and conduct money may be paid to him, and if the officer fails to attend and submit to such examination pursuant to such order the Corporation shall be liable if a plaintiff to have its action dismissed, and if a defendant to have its defence struck out and to be placed in the same position as if it had not defended. Such examination shall not be used in evidence at the trial:

**330.** Any party may, at the trial of an action or issue, use in evidence any part of the examination of the opposite party; but the Judge may look at the whole of the examination, and if he is of opinion that any other part is so connected with the part to be so used that the last mentioned part ought not to be used without such other part, he may direct such other part to be put in evidence.

*This would be  
done at the  
request of the  
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**331.** Any person who refuses or neglects to attend at the time and place appointed for his examination, or refuses to be sworn or to answer any proper question put to him, shall be deemed guilty of a contempt of Court and proceedings may forthwith be had by attachment. He shall also be liable, if a plaintiff, to have his action dismissed, and if a defendant, to have his defence, if any, struck out.

**332.** When an infant is a party the opposite party may examine the next friend or guardian of the infant or at his option the infant, if he is competent to give evidence.

**333.** Any person examined for discovery may be further examined on his own behalf, or on behalf of the Corporation whose officer or servant he is, in relation to any matter respecting which he has been so examined, and such explanatory examination shall be proceeded with immediately after the examination in chief.

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us under* **334.** A person for whose immediate benefit an action is prosecuted or defended may without order be examined for discovery.

**335.** Where an action is brought by an assignee the assignor may without order be examined for discovery.

**336.** Examination for discovery may take place at any time after the statement of defence of the party examining or to be examined has been delivered or after the pleadings have been noted as closed as against the party to be examined, and the examination of a party to an issue may take place at any time after the issue has been filed.

**337.**—(1) A party within Ontario shall attend for examination for discovery before the proper officer in the County in which he resides upon service of an appointment upon his solicitor seven days before the day appointed for the examination, and conduct money shall be paid or tendered to the solicitor.

(2) The solicitor shall forthwith communicate the appointment to the party required to attend, and shall not apply the money to any debt due to the solicitor or any other person, or pay the same otherwise than to such party for his conduct money, and the same shall not be liable to be attached.

(3) The attendance of a party may also be required under Rules 345 to 347.

(vii) *General Rules as to Examinations*

**338.** Rules 339 to 347 shall apply to the examination of a witness upon a motion or under an order and to cross-examination upon affidavits and to all examinations for discovery.

**339.** Any witness examined shall be subject to cross-examination and re-examination; and the examination, cross-examination and re-examination shall be conducted as nearly as may be as at a trial.

**340.**—(1) The examination (unless otherwise ordered or agreed) shall, if the examiner is a shorthand writer or a shorthand writer is available, be taken in shorthand by the examiner or by a shorthand writer approved and duly sworn by him and shall be taken down by question and answer; and it shall not be necessary for the depositions to be read over to, or signed by, the person examined.

(2) A copy of the depositions so taken, certified by the person taking the same as correct, and if such person be not the examiner, also signed by the examiner, shall be received in evidence saving all just exceptions.

(3) The depositions taken by the examiner shall, upon payment of his fees, be returned to and filed in the office in which the proceedings are carried on.

**341.** The person to be examined or any party to the action shall, if so required by the subpoena or notice, produce on the examination all books, papers and documents relating to the matters in issue which he could be required to produce at a trial.

**342.** Where any person admits, upon his examination, that he has in his custody or power any such document the examiner may direct him to produce it for the inspection of the party examining, and for that purpose allow a reasonable time.

**343.** If any person under examination objects to any question put to him, the question and the objection shall be noted, and the validity of such objection shall be decided by the examiner, whose decision shall also be noted.

**344.** Any direction or ruling of the examiner shall be subject to review upon any motion with respect to such examination without an appeal.

**345.**—(1) Any party who is liable to be examined may be required to attend before the proper officer in the County in which he resides, for examination, upon being served with an appointment and upon payment of the proper fees.

(2) Any person not a party, liable to be examined, shall be served with a subpoena.

**346.** The party examining shall serve the appointment for such examination upon the solicitor of the opposite party at least forty-eight hours before the examination.

*personal  
service*

**347.** An order may be made for the examination of any person liable to be examined as aforesaid before any other person or in any other County.

(viii) *Production of Documents*

**348.** Each party, after the defence is delivered, or an issue has been filed, may by notice require the other within ten days to make discovery on oath of the documents which are or have been in his possession or power, relating to any matters in question in the action; and to produce and deposit the same with the proper officer for the usual purposes. A copy of such affidavit shall be served forthwith after filing.

**349.** The Court may at any time order production and inspection of documents generally or of any particular document in the possession of any party.

¶ **350.** When a document is in possession of a person not a party to the action and the production of such document at a trial might be compelled, the Court may at the instance of any party, on notice to such person and to the opposite party, direct the production and inspection thereof, and may give directions respecting the preparation of a certified copy which may be used for all purposes in lieu of the original.

**351.**—(1) A party shall be entitled to obtain the production, for inspection, of any document referred to in the pleadings or affidavits of the opposite party, by giving notice to his solicitor, and shall be entitled to take copies of such documents when so produced for inspection. (Form No. 29.)

(2) The party to whom such notice is given shall forthwith deliver to the party giving the same a notice stating a time within two days from the delivery thereof at which the document may be inspected at the office of his solicitor, and shall at the time named produce the document for inspection. (Form No. 30.)

**352.** If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute should be determined before deciding upon the right to the discovery or inspection, may order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

**353.** If a party fails to comply with any notice or order for production or inspection of documents, he shall be liable to attachment and shall also be liable, if a plaintiff, to have his action dismissed, and if a defendant, to have his defence, if any, struck out. Service of the notice of motion upon the solicitor of the party is, unless the Court otherwise directs, sufficient.

(ix) *Default of Pleading*

**354.** A defendant who fails to deliver a statement of defence and against whom the pleadings have been noted as closed, shall be deemed to admit all the statements of fact set forth in the statement of claim.

**355.** Where a plaintiff would be entitled to sign judgment for default of appearance to the writ he shall be entitled to sign a similar judgment, *mutatis mutandis*, for default of defence. (must post up at y claim etc)

**356.**—(1) In any other case the plaintiff may after the pleadings have been noted as closed move for judgment upon the statement of claim.

(2) Where default is made by one defendant and the action proceeds to trial as against another defendant such motion may be made at the trial.

**357.** Except by leave a judgment for default of appearance or defence shall not be signed, nor shall pleadings be noted closed nor shall an action be set down on motion for judgment for default, after the expiration of one year from the time when the party to sign the judgment or note the pleadings or to move for judgment first became entitled so to do.

**358.** Where issues arise otherwise than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the Court may, at the trial or on motion, give such judgment as upon the pleadings may seem just.

(x) *Replevin*

**359.** An order of replevin may be obtained:

1. On motion therefor on showing the facts of the wrongful taking or detention complained of, the value and description of the property, and that the person claiming it is the owner thereof, or is lawfully entitled to the possession thereof (as the case may be);

2. Or on *praecipe* if the person claiming the property, his servant or agent, makes an affidavit stating,—

- (a) That the person claiming the property is the owner or lawfully entitled to the possession thereof;
- (b) The value thereof;
- (c) That the property was wrongfully taken out of the possession of the claimant, or fraudulently got out of his possession, within two months next before the making of the affidavit;
- (d) That the deponent is advised and believes that the claimant is entitled to the order;
- (e) And that there is good reason to apprehend that unless the order is issued without waiting for a motion, the delay would materially prejudice the just rights of the claimant in respect to the property;

3. Or on *praecipe* if the property was distrained for rent or damage feasant, and the person claiming the property, his servant or agent, makes an affidavit stating,—

- (a) That the person claiming the property is the owner or is lawfully entitled to the possession thereof (describing the property);
- (b) The value thereof;
- (c) That the property was taken under colour of a distress for rent or damage feasant;

and in such case the order shall state that the defendant has taken and unjustly detains the property, under colour of a distress for rent or damage feasant (as the case may be). (Form No. 80).

**360.** The motion shall be on notice to the defendant, unless the special circumstances of the case in the opinion of the Court justify the making of an *ex parte* order. The Court instead of granting or refusing the order may direct the sheriff to take a bond in less or more than treble the value of the property, or may direct him, in addition to taking a bond pursuant to Rule 362, to take and detain the property until the further order of the Court, instead of at once replevying the same to the plaintiff; or may order that the plaintiff instead of giving a bond be at liberty to pay into

Court to the credit of the action, subject to further order, such sum as may be proper to stand as security to the defendant in the same manner and to the same extent as any bond which the plaintiff would otherwise be required to give to the sheriff.

**361.** The defendant may apply to the Court to discharge, vary, or modify the order, or to stay proceedings thereunder, or for any other relief with respect to the return, safety or sale of the property or any part thereof or otherwise.

**362.**—(1) Before the Sheriff acts on the order he shall take a bond, Form No. 131, from the plaintiff with two sufficient sureties in such sum as may be prescribed by the order, or if no special provision has been made, then in treble the value of the property as stated in the order of replevin.

(2) The plaintiff may instead of giving a bond pay into Court twice the value of the goods as stated in the order, and the Sheriff may act upon a certificate of the Accountant that the money has been paid.

**363.** When an order of replevin is issued for any property which had not been previously taken out of the plaintiff's possession, and for which the plaintiff might bring an action for conversion, the defendant shall be entitled, if the plaintiff fails in the action, to be fully indemnified against all damages sustained by the defendant, including any extra costs which he may incur in defending the action; and the bond shall be conditioned so as to require the plaintiff and the sureties to indemnify and save harmless the defendant from all loss and damage which he may sustain by reason of the seizure, and of any deterioration of the property in the meantime, in the event of its being returned, and all costs, charges, and expenses which the defendant may incur, including reasonable costs not taxable between party and party. This provision shall not be required in cases of distress for rent or damage feasant.

**364.** The Sheriff shall not serve a copy of the writ of summons or order until he has replevied the property, or some part thereof if he cannot replevy the whole.

**365.** Where the order is issued on *praecipe* under Rule 359 (2) the Sheriff shall take and detain the property, and shall not replevy the same to the plaintiff without the order of the Court, but may, after seven days from the time of taking the same, re-deliver it to the defendant, unless in the meantime the plaintiff obtains and serves on the Sheriff an order directing a different disposition of the property.

**366.** The Sheriff shall return the order on or before the tenth day after the service thereof, and shall transmit annexed thereto,—

- (a) The names of the sureties in, and the date of the bond taken from the plaintiff, and the name or names of the witnesses thereto;
- (b) The place of residence and addition of the sureties;
- (c) The number, quantity and quality of the articles of property replevied; and in case he has replevied only a portion of the property and cannot replevy the residue by reason of the same having been eloigned out of his county, or not being in the possession of the defendant or of any other person for him, he shall state in his return the articles which he cannot replevy and the reason therefor.

**367.**—(1) Where the Sheriff makes such a return of the property distrained, taken or detained having been eloigned, the Court may make an order (Form No. 81) directing the Sheriff to take in *withernam* goods and chattels of the defendant.

(2) Where a Sheriff makes return that the whole or any part of the property has been eloigned, or that for any reason the same cannot be replevied, the plaintiff may, if he so elect, serve the writ of summons, and in his statement of claim, claim either the return of the goods and damages for their detention, or damages for their conversion.

**368.** Where the plaintiff is entitled to sign judgment by default, he may sign final judgment for five dollars and costs, but shall not be entitled to recover a larger sum except upon an assessment or upon filing the consent of the defendant or his solicitor, and an affidavit verifying the signature to such consent.

(xi) *Interim Preservation of Property, Inspection, etc.*

**369.** Where there is a dispute arising upon a contract or any alleged contract affecting the title to any property the Court may make an order for the preservation or interim custody of such property, or may order that the amount in dispute be brought into Court or otherwise secured, or may order the sale of the property and the payment of the proceeds into Court.

**370.** The Court may, at any time, order the sale, in such manner and on such terms as may seem just, of any goods, wares, or merchandise which may be of a perishable nature or likely to be injured from keeping, or which for any other reason it may be desirable to have sold at once.

**371.** Where a plaintiff seeks to recover specific property other than land, and the defendant does not dispute the title of the plaintiff, but claims to retain the property by virtue of a lien or otherwise as security for money, the Court may order that the plaintiff pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the Court may direct, and that upon such payment into Court being made, the property claimed be given up to him.

**372.**—(1) The Court may, upon the application of any party and upon such terms as may seem just, make any order for the detention or preservation of property, being the subject of the action, or for the inspection of any property, the inspection of which is necessary for the proper determination of the question in dispute; and for all or any of the purposes aforesaid may authorize any person or persons to enter upon or into any land or building in the possession of a party and may authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The Court may also on notice to any person not a party to the action make an order authorizing entry upon or into any lands or building in the possession of such person for the purposes of such inspection.

(xii) *Security for Costs*

**373.** Security for costs may be ordered:

- (a) Where the plaintiff resides out of Ontario;
- (b) Where the plaintiff is ordinarily resident out of Ontario, though he may be temporarily resident within Ontario;
- (c) Where the plaintiff has brought another action or proceeding for the same cause which is pending in Ontario or in any other country;

- (d) Where the plaintiff or any person through or under whom he claims, has had judgment or order passed against him, in another action or proceeding for the same cause in Ontario or in any other country, with costs, and such costs have not been paid;
- (e) Where the plaintiff sues as an informer, or seeks to recover any penalty given to an informer or person who sues for the same under a statute or law by which a penalty is given to any person who sues for the same, either for his sole benefit, for the benefit of the Crown, or partly for his benefit and partly for the benefit of the Crown, and the defendant swears that in his belief the plaintiff or informer is not possessed of property sufficient to answer the costs of the action in case a judgment is rendered in favour of the defendant, and that he (the applicant) has a good defence to the action upon the merits, as he is advised and believes;
- (f) Where the action is brought by a nominal plaintiff;
- (g) Where upon the examination of the plaintiff it appears that there is good reason to believe that the action is frivolous and vexatious, and that the plaintiff is not possessed of sufficient property in Ontario to answer the costs of the action;
- (h) Where an action is brought on behalf of a class and the plaintiff is not possessed of sufficient property to answer the costs of the action, and it appears that the plaintiff is put forward or instigated to sue by others;
- (i) Where under the provision of any statute the defendant is entitled to security for costs;
- (j) Where either party to a garnishee, interpleader or other issue is an active claimant, and would if a plaintiff be liable to give security for costs.

**374.**—(1) The order shall require the plaintiff, within four weeks from service to give security in \$400 for the defendant's costs of the action, and shall direct that all further proceedings be stayed in the meantime, and that in default of such security being given the action shall, as against the defendant obtaining the order, be dismissed with costs.

(2) In actions in the County Court the amount of the security shall be \$200.

**375.** Where it appears by the writ of summons, or by an indorsement thereon, that the plaintiff resides out of Ontario, the order may be obtained on *praecipe*.

**376.** Upon default in giving security the action may upon an *ex parte* application be dismissed with costs.

**377.** Where security for costs is ordered, proceedings in the action shall be stayed; from the service of the order until the security is given, and, if given by bond, until the bond is allowed.

**378.** The day on which an order that a party do give security for costs is served, and the time until and including the day on which the security is allowed, shall not be reckoned in the computation of time allowed for taking any proceeding in the action.

**379.** A bond given as security for costs shall be to the party requiring the security, and shall be by two sufficient sureties or by a guarantee company.

**380.** Upon the bond being filed, with affidavits of execution and justification, either party may apply to allow or disallow the same within seven days after notice of filing it is served, otherwise the bond shall stand allowed.

**381.**—(1) Instead of giving a bond as security for costs, a party may, without special order, pay into Court, as such security, a sum of money not less than half the penalty of the bond required.

(2) The party paying in the money shall, when paying the same in, state the purpose for which it is paid in, and shall forthwith serve a notice upon the opposite party specifying the fact and purpose of such payment.

**382.** The amount of security, whether directed to be given by an order issued on *praecipe* or otherwise, may be increased or diminished from time to time.

**383.**—(1) A defendant must appear before obtaining an order for security of costs.

(2) Where the writ of summons is specially endorsed the defendant shall also file the affidavit required by Rule 56, and if an order for security for costs is issued the plaintiff may pay into Court the sum of \$50, as a partial compliance with such order, and thereupon he shall be at liberty to cross-examine and move for judgment; but the order for security shall, in all other respects, have its full operation and effect.

(3) Such payment into Court shall not prejudice any motion that may be made to set aside the order for security.

(4) In actions in the County Court the amount of the partial security shall be \$25.

(5) Where upon motion under Rule 57 the plaintiff is awarded judgment for a portion only of his claim, he may issue the judgment and execution thereunder, but so long as the order for security stands he shall not take any other proceedings in respect to the residue of his claim, until it has been fully complied with.

**384.** A bond given for security for costs may be delivered up for cancellation or suit upon consent of the solicitors in the cause without order.

**385.** Where money has been paid into Court as security for costs or with a defence it may be paid out on the consent of the solicitors in the cause or matter, without order, and may be paid to the solicitors upon production of the consent of the client verified by affidavit.

(xiii) *Interim Alimony*

**386.**—(1) In an alimony action, the defendant may, at any time before the statement of defence is due, give notice in writing that he submits to pay the interim alimony, and costs, as demanded by the plaintiff in the indorsement on the writ; and in that case no motion for interim alimony shall be made until there has been a default in payment; and in case of default, affidavits being filed verifying the indorsement and notice and the default, an order for payment of the sum demanded shall be issued on *praecipe*.

(2) The defendant may give notice in writing that he submits to pay such less sum as he may deem proper and may name in his notice.

(3) Where a notice has been so served and the plaintiff accepts the amount therein mentioned as sufficient, the defendant shall pay thereafter the sum so offered as interim alimony, and no order for interim alimony shall be made until there has been default in payment.

(4) Where a notice has been so served, the plaintiff's interim disbursements may be taxed without order.

(5) Where the plaintiff does not accept the amount offered and upon motion for interim alimony it is found that the sum

so offered is reasonable, and the defendant pays to the plaintiff the sum so offered, no order for interim alimony shall be made until there has been default in payment.

**387.** An application for interim alimony or for interim disbursements shall not be made until the time for delivering the defence has expired, and costs shall not be ordered to be paid *de die in diem* by the defendant, but only the amount of the cash disbursements actually and properly made by the plaintiff's solicitor.

**388.** Where the plaintiff in an alimony action fails to obtain a judgment for alimony, no costs beyond the amount of the cash disbursements actually and properly made by the plaintiff's solicitor shall be ordered to be paid by the defendant.

(xiv) *Change of Solicitor*

**389.** A party suing or defending by a solicitor may change his solicitor by filing and serving a notice to that effect.

**390.** A party suing or defending in person and desiring to be represented by a solicitor may file and serve a notice to that effect.

**391.** A party represented by a solicitor and desiring to sue or defend in person may file and serve a notice to that effect.

**392.** When the solicitor on the record dies and no notice changing the solicitor has been filed and served, service may be effected by mailing the document to be served to the party at his address given in the writ or appearance (as the case may be) by registered letter, endorsed with a memorandum: "This document is served by mail as your solicitor is dead and no new solicitor has been appointed in his place."

(xv) *Compounding Penal Actions*

**393.** Leave to compound a penal action may be given, but in cases where part of the penalty goes to the Crown notice shall first be given to the Attorney-General for Canada or the Attorney-General for Ontario as the case may be.

**394.** The order for compounding shall not be made unless the defendant undertakes to pay the sum for which the Court has given him leave to compound such action.

**395.** Where leave is given to compound the proportion of the Crown shall, unless otherwise ordered, be paid into Court for the use of His Majesty.

(xvi) *Transmission of Papers*

**396.** Every local officer shall upon *praecipe* and payment of the necessary postage or express charges for transmission and return, transmit to the Central Office, Toronto, all papers and documents required for use in Toronto.

**397.** Where documents filed with an officer of the Court are required by or for use before any other officer, the officer with whom the documents are filed shall upon the production of a request signed by the officer requiring them transmit them upon payment of the postage or express charges required for their transmission and return.

(xvii) *Striking Out Jury Notices*

**398.**—(1) When an application is made to a Judge in Chambers for an order striking out a jury notice, and it appears to him that the action is one which ought to be tried without a jury, he shall direct that the issues shall be tried and the damages assessed without a jury, and in case the action has been entered for trial shall direct the action to be transferred to the non-jury list.

(2) The refusal of such an order by the Judge in Chambers shall not interfere with the right of the Judge presiding at the trial to try the action without a jury. Nor shall an order made in Chambers striking out a jury notice interfere with the right of the judge presiding at the trial to direct a trial by jury.

(3) The Judge presiding at a jury sittings in Toronto, may in his discretion strike out the jury notice and transfer the action for trial to a non-jury sittings, and this power may be exercised notwithstanding that the case is not on the peremptory list for trial before the said Judge.

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CHAPTER XV

REFERENCES

(i) *Referees*

**399.** In the event of the Referee declining to act, or dying before he has made his report, a Judge may appoint a new Referee.

**400.** The practice and procedure on a reference to a Referee shall be the same, as nearly as may be, as the practice and procedure in the Master's office.

**401.** The Court may require explanations or reasons from a Master or Referee, and may remit the cause or matter, or any part thereof, for further consideration, to the same or any other Master or Referee.

(ii) *Proceedings on References*

**402.** Every order of reference shall be brought into the Master's office within ten days after it is issued, by the party having the carriage of the same, and in default any other party having an interest in the reference may assume the carriage of the order.

**403.** Unless otherwise directed by the Master, notice of the first proceeding before him shall be given to every party affected by or interested in the inquiry though any such party may not have appeared or pleaded in the action; but in the absence of special direction when default is made in appearance upon the notice, no further notice need be given unless the party in default files a written request for notice with an address for service.

**404.** Where in proceedings before the Master, it appears to him that a person not already a party ought to be made a party, and ought to be at liberty to attend the proceedings before him, he may make an order adding him as a party defendant and direct a copy of the order, indorsed with a notice (Form No. 39), and a copy of the judgment or order of reference indorsed with a notice in accordance with Form No. 38, to be served upon such person, who thereupon shall be treated and named as a party to the action and shall be bound as if he had been originally made a party.

**405.** A person so served may apply to the Court at any time within ten days from the date of such service, to discharge, add to, vary, or set aside the order of reference or the order adding him as a party.

**406.** Where, at any time during the reference, it appears to the Master that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor; and where the parties constituting such class cannot agree upon the solicitor to represent them, the Master may nominate him.

**407.** Where a party prosecuting a reference does not proceed with due diligence, the Master may upon the application of any other person interested commit to him the prosecution of the reference.

**408.** A reference shall be proceeded with as far as possible *de die in diem* and when an adjournment is ordered the Master shall note in his book the reason thereof and shall when practicable fix the time when it is to be resumed so as to avoid the service of a new appointment.

**409.** The Master shall (unless he dispenses with it) in the first instance issue an appointment to consider. Upon the return of the appointment he shall fix a time at which to proceed with the reference and shall give any special directions he thinks fit, as to:

- (a) The parties who are to attend on the several accounts and inquiries;
- (b) The time when each proceeding is to be taken;
- (c) The mode in which any accounts referred to him are to be taken or vouched;
- (d) The evidence to be adduced in support thereof;
- (e) The manner in which each of the accounts and inquiries is to be prosecuted.

Any such directions may be afterwards varied or added to, as may be found necessary.

**410.** Under an order of reference, the Master shall have power:

- (a) To take the accounts with rests or otherwise;
- (b) To take account of money, rents and profits received or which, but for wilful neglect or default, might have been received;
- (c) To set occupation rent;
- (d) To take into account necessary repairs, and lasting improvements, and costs and other expenses properly incurred otherwise, or claimed to be so;
- (e) To make all just allowances;
- (f) To report special circumstances;

(g) And generally, in taking the accounts, to inquire, adjudge, and report as to all matters relating thereto, as fully as if the same had been specifically referred.

**411.** The Master may cause parties to be examined, and to produce books, papers and writings, as he thinks fit, and may determine what books, papers and writings are to be produced, and when and how long they are to be left in his office; or in case he does not deem it necessary that such books and papers or writings should be left or deposited in his office, he may give directions for the inspection thereof by the parties requiring the same, at such time and in such manner as he deems expedient.

**412.** The Master may cause advertisements for creditors or for heirs or next of kin, or other unascertained persons, and the representatives of such as are dead, to be published as the circumstances of the case require; and in such advertisements he shall appoint a time within which such persons are to come in and prove their claims, and shall notify them that unless they so come in, they are to be excluded from the benefit of the order. A claim may nevertheless be received by the Master at any later time. (Form No. 43.)

**413.** The Master shall consider the claims brought in before him pursuant to such advertisement, upon a day to be fixed by him when settling the advertisement, and the executor or person appointed to examine the claims may require the claimant to produce before him any document in his possession (Form No. 44), and if any claim is to be contested shall cause notice of contestation to be served upon the claimant fixing a day when he will adjudicate upon the claim. (Form No. 45.) Where a claim is not to be contested or is to be contested in part only a notice shall be sent according to Form No. 46.

**414.** The executor or administrator, or such other person as the Master directs, shall examine the claims sent in pursuant to the advertisement, and ascertain, as far as he is able, which of such claims is just and proper.

**415.** The executor or administrator, or one of the executors or administrators, or such other person as the Master directs, shall on or before the day appointed to consider the claims file an affidavit, verifying a list of the claims sent in pursuant to the advertisement, and stating which of such claims are just and proper to be allowed, and the reasons for such belief.

**416.** Under every order whereby the delivery of deeds or execution of conveyances is directed or becomes necessary, the Master shall give directions as to delivery of such deeds, settle conveyances where the parties differ, and give directions as to the parties to the conveyances and as to the execution thereof.

**417.** Where an account is to be taken, the accounting party, unless the Master otherwise directs, shall bring in the same in debit and credit form, verified by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit, and shall not be annexed thereto.

**418.** The Master may direct that in taking accounts the books of account in which the accounts required to be taken have been kept, or any of them, be taken as *prima facie* evidence of the truth of the matters therein contained.

**419.** Before proceeding to the hearing and determining of a reference, the Master may appoint a day for the purpose of entering into the accounts and inquiries, and may direct the production and inspection of vouchers, and if deemed proper the cross-examination of the accounting party on his affidavit, with a view to ascertaining what is admitted and what is contested between the parties.

**420.** A party seeking to charge an accounting party beyond what he has in his account admitted to have received, shall give notice thereof to the accounting party, stating as far as he is able the amount sought to be charged and the particulars thereof in a short and succinct manner. The Master may direct any party who seeks to falsify an account to deliver particulars of the item objected to. The particulars shall refer to the item by number.

**421.** The Master shall keep in his office a book in which he shall enter proceedings taken before him, and the directions which he gives in relation to the prosecution of the reference, or otherwise, and it shall not be necessary to issue or serve any formal order or document embodying such directions to bind the parties attending the reference.

**422.** In giving directions, and in regulating the manner of proceeding before him, the Master shall devise and adopt the simplest, most speedy, and least expensive method of prosecuting the reference, and with that view may dispense with any proceeding ordinarily taken which he conceives to be unnecessary, or substitute a different course of proceeding for that ordinarily taken.

**423.** Where the Master directs parties not in attendance before him to be notified to attend at some future day, or for different purposes at different future days, it shall not be necessary to issue separate appointments, but the parties shall be notified by one appointment, signed by the Master, of the proceedings to be taken, and of the times by him appointed for the taking of the same.

**424.** As soon as the hearing of any matter pending before the Master is completed, he shall so inform the parties to the reference then in attendance, and make a note to that effect in his book; and after such entry no further evidence shall be received, or proceedings had, without the special permission of the Master; and the Master shall then fix a day to settle his report and shall cause notice of such day to be given to all parties interested not then in attendance who have appeared upon the reference or requested notice under the provisions of Rule 403, unless for special reason such notice is dispensed with.

**425.** In the report no part of any account, affidavit, deposition, examination or pleading used in the Master's office shall be stated or recited, but the same may be referred to by date or otherwise.

**426.** Reports affecting money in Court, or to be paid into Court, shall set forth, in figures, in a schedule, a brief summary of the sums found by the report, and paid or payable into or out of Court, and the funds or shares to which the sums of money are respectively chargeable.

**427.** As soon as the Master's report is settled and signed it shall be delivered out to the party prosecuting the reference, or in case he declines to take the same, then, in the discretion of the Master, to any other party applying therefor.

**428.** Pending a reference to a Master all affidavits, papers and documents relating thereto required to be filed shall be filed with the Master, but every report or certificate of a Master shall be filed in the office in which the proceedings were commenced, and upon the completion of the reference the papers shall be transferred to the office in which the proceedings were commenced.

**429.** Any party affected by a report may file the same, or a duplicate thereof. He shall forthwith serve notice of filing.

**430.**—(1) Where the Master is directed to appoint money to be paid at some time and place, he shall appoint the same to be paid into some Bank to the joint credit of the party to

whom the same is made payable and the Accountant. The party to whom the same is made payable may name the Bank into which he desires the same to be paid.

(2) Where money is paid into a Bank in pursuance of such appointment, the party paying may pay the same either to the credit of the party to whom the same is made payable or to the joint credit of the party and the Accountant; and if the same be paid to the sole credit of the party, such party shall be entitled to receive the same without order.

(3) When money is paid to the joint credit of the Accountant and the party entitled, the Accountant shall sign the cheque for payment out upon the production of the consent of the party paying in, duly verified, or of his solicitor, or in the absence of such consent upon the order of a Judge.

**431.** Where, by a report, any money in Court is found to belong to infants, the Master shall require proper evidence of the age of the infants to be given before him and shall in his report state the date of birth and age at the time of his report of each of such infants or shall certify specially his reason for not so doing.

**432.** In administration suits, reports shall, as far as possible, be according to Form No. 48.

**433.** Every Master shall have the same power, authority and jurisdiction as the Master at Toronto when sitting in Chambers, in respect to all matters referred to him, or which may arise in his office.

**434.** Where a Master acts as under the preceding rule the fees (payable in stamps) shall, in respect of such business, be the same as are payable for the like business in Chambers.

**435.** In taking accounts in administration proceedings interest shall be computed on the deceased's debts from the date of the judgment or order, and on legacies from the end of one year after the deceased's death, unless any other time of payment is directed by the will.

**436.** Where an order is made for payment of money out of Court to creditors, the person whose duty it is to prosecute the order shall send each creditor, or his solicitor (if any), a notice that the cheques may be obtained from the Accountant; and shall deposit with the accountant any papers necessary to enable the creditors to receive their cheques. (Form No. 47).

**437.** Every notice required to be given to a creditor or claimant shall unless the Master otherwise directs be transmitted by registered letter to the creditor or claimant at the address given in the claim sent in, or, in case the creditor or claimant has employed a solicitor, to such solicitor at the address given by him.

**438.** Where a sale is ordered, the Master may cause the property to be sold either by public auction, private contract or tender, or part by one mode and part by another, as he may think best for the interest of all parties.

**439.** The party having the conduct of the sale shall bring into the Master's office a draft advertisement, which shall show:

- (a) The short style of cause;
- (b) That the sale is in pursuance of an order of the Court;
- (c) The time and place of sale;
- (d) A short and true description of the property to be sold;
- (e) The manner in which the property is to be sold, whether in one lot or several, and if in several, in how many, and what lots;
- (f) What proportion of the purchase money is to be paid down by way of deposit, and at what time or times, and whether the residue of such purchase money is to be paid with or without interest;
- (g) If the sale is subject to a reserve bid it shall be so stated;
- (h) Any particulars in which the proposed conditions of sale differ from the standing conditions.

**440.** Upon the return of the appointment to settle the advertisement the Master shall also fix the time and place of sale, name an auctioneer, where one is to be employed, give direction for publication, fix the reserve bid, and make every other necessary arrangement preparatory to the sale.

**441.** The standing conditions of sale shall be those set forth in Form No. 49.

**442.** All parties may bid, except the party having the conduct of the sale, and except any trustees, agents, and other persons in a fiduciary position.

**443.** The Master or his Clerk shall conduct the sale where no auctioneer is employed.

**444.** The purchaser shall at the time of sale sign an agreement to purchase.

**445.** The deposit shall be paid to the vendor, or his solicitor, at the time of sale, and shall forthwith be paid by him into Court, in the name of the purchaser.

**446.** After the sale is concluded, the auctioneer, where one is employed, shall make an affidavit as to the result of the sale; and where no auctioneer is employed, the Master or his Clerk shall certify the result; and when expedient a separate report on sale may be made. (Form No. 50).

**447.** Objection to the sale shall be by motion to set aside the same; and notice of the motion shall be served upon the purchaser and on the other parties, and biddings shall be opened only on special grounds.

**448.** The purchaser may pay his purchase money, or the balance thereof, into Court without further order; and after confirmation of the report on sale, upon notice to the party having the conduct of the sale, he may if he so desires obtain a vesting order; and when he is entitled to be let into possession, if possession is wrongfully withheld from him, an order against any party in possession for the delivery thereof to him may be made upon his application or upon the application of the vendor.

**449.** The vendor shall, forthwith upon demand, deliver an abstract of title to the purchaser; and if the purchaser does not serve objections within seven days, he shall be deemed to have accepted the abstract as sufficient; but if objections are served, the vendor shall answer them within 14 days, and if the purchaser is still dissatisfied, and the parties cannot agree, either party may obtain from the Master an appointment to consider the abstract.

**450.** The Master shall determine all questions upon the abstract and the sufficiency thereof; and, if desired by the purchaser, may require the vendor to make the same as perfect as he can, and if the vendor neglects or refuses to do so, may permit the purchaser to supply defects therein, at the vendor's expense.

**451.** The Master shall not make a report on the abstract, but shall mark the objections as allowed or disallowed, and when he finds the abstract perfect, or as perfect as the vendor can make it, he shall certify to that effect thereon; and such certificate shall be final without filing, unless appealed from in the same manner as a Master's report.

**452.** After acceptance or confirmation of the abstract, the verification shall be proceeded with, and the vendor shall with all diligence afford the purchaser all the means of verification in his power, in the manner and according to the practice usual with conveyancers; and after having done so, he may serve a notice on the purchaser to make objections or requisitions, if any, within seven days, or that otherwise he will be deemed to have accepted the title.

**453.** Upon being served with such notice, the purchaser, if dissatisfied, shall serve his objections or requisitions within the time thereby limited; and the like course shall be followed upon such objections or requisitions as is prescribed in relation to the abstract.

**454.** In case of the refusal or neglect of the vendor to verify the abstract to the best of his ability, or to furnish any necessary proof or documents in his power, the Master may authorize the purchaser to do so at the vendor's expense.

**455.** The foregoing six Rules shall apply to all cases of reference to the Master as to title, as well as to sales by the Court.

**456.** Purchase money shall not be paid out of Court except upon consent of the purchaser or his solicitor, or upon proof being made to the Accountant that the purchaser has received a conveyance or vesting order in respect of the property for which the money in question was paid into Court.

**457.** No conveyance shall be settled until evidence is produced of the purchase money having been paid into Court, and, where a mortgage is taken for part of the purchase money, until evidence is given to the said officer of such mortgage having been registered and deposited with the Accountant.

**458.** Where a Master is to appoint a committee, guardian or receiver, the name proposed and the names of his proposed sureties shall be given in the appointment and the Master shall appoint the committee, guardian or receiver, and settle and approve of the proposed security, and when the security has been duly filed, shall sign a written appointment.

**459.** The Master shall appoint a time when the person appointed is to pass his accounts and pay his balances into Court; and in default of compliance with such direction, the person appointed may, on the passing of his accounts, be disallowed any salary or compensation for his services, and may be charged with interest upon his balances.

## CHAPTER XVI

## MORTGAGE ACTIONS

**460.** A mortgagee may in an action claim foreclosure of the equity of redemption or a sale of the mortgaged premises and payment of the mortgage debt by any party personally liable therefor and possession of the mortgage premises. The writ shall be indorsed in accordance with the Form applicable thereto.

**461.** Where a defendant by writ in an action for foreclosure desires a sale, but does not otherwise desire to defend the action, he shall, within the time allowed for appearance, file and serve a memorandum, entitled in the action, to the following effect: "I desire a sale of the mortgaged premises instead of foreclosure," and shall pay into Court the sum of \$80 to meet the expenses of the sale, and thereupon the judgment shall be entered for sale.

**462.** A person made a party in the Master's office and desiring a sale shall make a similar deposit before the Master's report is settled, and obtain an order which may be issued on *praecipe* directing sale instead of foreclosure, and thereupon all subsequent proceedings shall be had and taken as if the judgment had been in the first instance for sale.

**463.** Where there are infant defendants the Official Guardian may require the judgment to be for sale without making any deposit.

**464.**—(1) If the plaintiff prefers that the sale be conducted by any adult defendant desiring the sale, he may so elect; and he shall thereupon notify the defendant of such election and the defendant making the deposit shall be entitled to a return thereof.

(2) In other cases the Master shall deal with the deposit in making his report.

**465.** The Court may on special application either before or after judgment direct a sale instead of a foreclosure; and without previously determining the priorities of incumbrancers, or giving the usual or any time to redeem.

**466.** In a mortgage action where the defendants, or some of the defendants, are infants and default is made by the adult defendants and the Official Guardian does not desire to set up any defence, the plaintiff, upon filing affidavits showing such facts and circumstances as entitle him to judgment, may move for judgment in Chambers, upon notice to the Official Guardian.

**467.**—(1) Where the writ has been duly indorsed, and the defendant fails to appear, or by his statement of defence admits the execution of the mortgage and other facts entitling the plaintiff to a judgment, or where the defendant disclaims any interest in the mortgaged premises, or where no statement of defence is delivered, or where the defendant disputes the amount of the plaintiff's claim only, the plaintiff may sign judgment. (Forms Nos. 96, 97 and 98).

(2) Where the defendant by his appearance disputes only the amount of the plaintiff's claim, he shall be entitled to four days' notice of the taking of the account. Where no reference as to incumbrances is desired, such account may be taken by the officer signing judgment, whose finding shall be subject to appeal to a Judge in Chambers in the manner prescribed for appeals from the Master.

(3) Where the writ has not been personally served, the claim of the plaintiff shall be duly verified by an affidavit which shall be filed with the officer taking the account.

**468.** Upon a reference under a judgment for foreclosure or sale or redemption of mortgaged property, the Master shall enquire and state whether any person and who, other than the plaintiff, has any lien, charge, or incumbrance upon the land and premises embraced in the mortgage security of the plaintiff, subsequent thereto.

**469.** The plaintiff shall bring into the Master's Office certificates of the Registrar of Deeds and Sheriff of the County wherein the property lies, setting forth all the incumbrances which affect the property and such other evidence as may be necessary.

**470.** The Master shall direct all such persons as appear to have any lien, charge or incumbrance upon the property in question, subsequent to the mortgage in question, to be made parties to the action, and to be served with a notice. (Form No. 40).

**471.** Any party served with such notice may apply at any time within 10 days from the date of the service, to discharge, add to, vary, or set aside the judgment, or the order making him a party.

**472.** The Master before he proceeds to hear and determine shall require an appointment (Form No. 41) to be served upon all persons made parties before the judgment appearing to have any lien, charge or incumbrance upon the lands in question, subject to the plaintiff's mortgage, and shall in the notice to the defendant by writ, required by Rule 403,

state the names and nature of the claims of those so notified, and of those added under the provisions of Rule 470 as appearing to have a lien, charge or incumbrance upon the said lands, and such notice may be in the Form No. 42.

**473.** Where a person who has been duly served with a notice under Rule 470 or with an appointment under Rule 472 neglects to attend at the time appointed, the Master shall treat such non-attendance as a disclaimer by the person so making default; and any claim of such person shall be thereby foreclosed, unless otherwise ordered upon application duly made for that purpose.

**474.** When all parties have been duly served, the Master shall take an account of what is due to the plaintiff, and to the other incumbrancers (if any), for principal money and interest, and tax their costs, and settle their priorities, and appoint a time and place, or times and places, for payment according to the practice of the Court.

**475.** On any proceeding for foreclosure by, or for redemption against an assignee of a mortgagee, the statement of the mortgage account, under the oath of such assignee, shall be sufficient *prima facie* evidence of the state of such account, and an affidavit or oath shall not be required from the mortgagee or any intermediate assignee denying any payment to such mortgagee or intermediate assignee, unless the mortgagor or his assignee, or the party proceeding to redeem denies by oath or affidavit the correctness of such statement of account.

**476.** The Master's report shall state the names of all persons who have been made parties in his office, and who have been served with the notice or appointment hereinbefore provided for, and the names of such as have made default, and shall set forth the amount of the claims, and the priorities of such as have attended, and these latter shall be certified as the only incumbrancers upon the property.

**477.** Subsequent accounts shall, from time to time, be taken, subsequent costs taxed, and necessary proceedings had, for redemption by, or foreclosure of, the other parties entitled to redeem the mortgaged premises, as if specific directions for all these purposes had been contained in the judgment.

**478.** If the judgment directs a sale on default in payment, then on default being made, and an order for sale obtained, the property shall be sold, with the approbation of the Master, and the purchaser shall pay his purchase money into Court to the credit of the action.

**479.** The purchase money, when so paid, shall be applied and paid out of Court in payment of what has been found due to the plaintiff and the other incumbrancers (if any), according to their priorities, together with subsequent interest and subsequent costs.

**480.** Upon a reference under a judgment for redemption, the Master shall, without any special direction, take an account of what is due to the defendant for principal money, interest, and costs, and shall appoint a time and place for payment.

**481.** Where the judgment is for redemption or foreclosure, or redemption or sale, such proceedings are in such case to be thereupon had, and with the same effect, as in an action for foreclosure or sale, and in such case the last incumbrancer shall be treated as the owner of the equity of redemption.

**482.** Subject to the provisions of *The Mortgages Act*, upon payment of the amount found due, the mortgagee shall, unless the judgment otherwise directs, assign and convey the mortgaged property to the party making the payment, or to whom he may appoint, free and clear of all incumbrances done by the mortgagee, and shall deliver up all deeds and writings in his custody or power relating thereto.

**483.** If the purchase money is not sufficient to pay what has been found due to the mortgagee (where the mortgagor or person liable to pay the debt is a defendant), he shall be entitled on an *ex parte* application, to an order for the payment of the deficiency.

**484.**—(1) Where the state of the account ascertained by a judgment, order or report is changed before the final order is obtained, the mortgagee may either before or after the day appointed for payment apply *ex parte* to fix, by reference to a Master or otherwise, the amount to be paid in lieu of the amount previously ascertained, or where the day appointed for payment has not arrived may give notice to the party by whom the money is payable that he gives him credit for a sum certain, to be named in the notice, and that he claims that there remains due in respect of such mortgage money a sum certain, to be also named in the notice.

(2) Where the application is made after the day appointed for payment, and in other cases if so directed, a new day for payment shall be appointed.

(3) Where notice of credit has been given, if the sums named therein appear proper to be allowed and paid, the final order may be granted without further notice; but the

party to whom the notice of credit is given may apply to fix, by reference to a Master or otherwise, the amounts proper to be allowed and paid instead of the amounts mentioned in the notice.

**485.**—(1) In an action for foreclosure or sale, or for recovery of possession of any mortgaged property for default in the payment of interest, or of an instalment of the principal, the defendant may, before judgment or after judgment, but before sale or final foreclosure or recovery of possession of the mortgaged property, move to stay the action upon payment of the amount then due for principal, interest and costs.

(2) Any action so stayed may upon subsequent default in the payment of a further instalment of the principal, or of the interest, be proceeded with by leave of the court.

**486.** In default of payment according to the report in a foreclosure action, a final order of foreclosure may be granted against the party making default, on an *ex parte* application.

**487.** In a redemption action, on default of payment being made according to the report, the defendant shall be entitled, on an *ex parte* application, to a final order of foreclosure against the plaintiff, or to an order dismissing the action with costs to be paid by the plaintiff.

**488.** In a redemption action where the plaintiff is declared foreclosed, directions may be given either by the final order foreclosing the plaintiff, or by subsequent orders, that all necessary inquiries be made, accounts taken and proceedings had for redemption or foreclosure, or redemption or sale, as against any subsequent incumbrancers, or for the adjustment of the relative rights and liabilities of the original defendants as among themselves.

**489.** In mortgage actions the period allowed for redemption in the first place shall be six months and when it becomes necessary to fix a date for redemption after the lapse of the first period the further time allowed shall be one month.

**490.**—(1) Where one or more of the persons interested in the equity of redemption are already defendants, and it is made to appear that by reason of their number or otherwise, it is expedient to permit the action to proceed without the presence of the other persons interested in the equity of redemption, the Court may give directions accordingly, and may order such other persons to be made parties in the Master's office after judgment.

(2) Where after judgment it appears that persons are interested in the equity of redemption besides those who are already parties, such persons may be made parties in the Master's office upon such terms as may seem just.

## CHAPTER XVII

### APPEALS AND NEW TRIALS

#### (i) *Appeals to a Divisional Court*

**491.**—(1) In all cases other than an appeal from an interlocutory order an appeal to the Appellate Division or a motion for a new trial shall be made by notice of motion served upon all parties interested within 15 days after the date of the judgment or order appealed from. (Form No. 122).

(2) The notice shall state the nature of the relief asked and shall set forth the grounds of appeal, and no other grounds may be argued, save by leave of the Court.

**492.** In all cases other than an appeal from an interlocutory order:

- (1) The appeal shall be set down for hearing by filing the notice of motion and proof of service within five days after service. There shall at the same time be left with the Registrar proof that the copies of the evidence required for use upon the appeal have been ordered.
- (2) The appellant shall within thirty days after setting down the appeal cause to be transmitted to the Registrar of the Appellate Division the record and exhibits and all such other papers as are necessary for the hearing of the appeal and shall deliver to him five typewritten copies of an appeal book for the use of the judges, each containing in the following order,—
  - (a) an index;
  - (b) the notice of appeal;
  - (c) the pleadings;
  - (d) the judgment or order appealed from;

- (e) the reasons for judgment;
- (f) such of the exhibits, or such parts thereof as are material for the hearing of the appeal, arranged in chronological order (when the exhibits are copied in the evidence by the reporter they need not be copied again);
- (g) the evidence (when more convenient the evidence may be bound separately);
- (h) any other document material to the due hearing of the appeal.

(3) When the evidence has not been received from the stenographer within the time limited by clause (2) it shall be sufficient if it is put in within five days after it is ready.

(4) When compliance with the provisions of the Rule as to appeal books would cause undue expense or delay a Judge of the Appellate Division may give special directions.

(5) As soon as the appeal book and evidence have been received by the Registrar the appeal shall be placed upon the list of cases ready to be heard.

(6) In County Court appeals where copies of the evidence and of the proceedings at the trial are necessary a certificate from the Judge that such copies have been ordered from the stenographer shall be deemed to dispense with the inclusion of such evidence and proceedings in the papers certified, and the appeal may be set down without such copies upon the appellant's solicitor undertaking to deposit them as soon as they are received from the stenographer. In case such undertaking shall not be performed the provisions of Rule 497 shall apply and may be enforced.

**493.** In an appeal from an interlocutory order:

- (1) Leave to appeal shall be obtained from a judge other than the judge appealed from.
- (2) The application for leave shall be made within one week from the pronouncing of the order appealed from, or such further time as may be allowed by the judge hearing the application for leave to appeal.

(3) Leave to appeal shall not be granted unless,—

- (a) There are conflicting decisions by a judge or Court upon the matter involved in the proposed appeal and it is in the opinion of the judge desirable that an appeal be allowed; or
- (b) There appears to the judge hearing the application to be good reason to doubt the correctness of the decision or order in question and the appeal involves matters of such importance that in the opinion of the judge leave to appeal should be given.

(4) If leave is given the appeal shall be set down within three days after the granting of leave, without further notice of appeal, and appeal books shall be put in within a week thereafter.

(5) Save as aforesaid the provisions of the preceding rule shall apply.

**494.** In an appeal under a Statute where leave to appeal is necessary, leave to appeal shall be obtained on notice to the parties interested within two weeks from the pronouncing of the order appealed from, or within such further time as the judge hearing the application shall allow and the appeal shall be set down for hearing within three days after the granting of leave and save as aforesaid the provisions of Rules 491 and 492 shall apply.

**495.** In an appeal from a judgment of the Supreme Court either party may lodge with the Registrar five copies of a typewritten statement of the points of law and of fact intended to be argued including a list of cases intended to be cited and such references to the evidence, by page and line, as may facilitate the argument. Such statement shall be lodged at the latest upon the day before the case is placed upon the peremptory list for argument and within the same time a copy thereof shall be furnished to the other party.

*NOTE.—It is not intended or desired that this statement should be a factum or a brief. It should be a concise statement of the points without argument.*

**496.**—(1) An appeal which is not perfected nor prosecuted as required, within the time prescribed or allowed, shall be deemed to be in default and the respondent may have it struck from the list by the Registrar as an abandoned appeal upon giving five days' notice to the appellant of his intended application.

(2) If the appeal is perfected within the five days from the giving of such notice or if within that time an application is made for an order extending the time the Registrar shall make no order.

(3) If the appeal is not perfected within the five days or within such further time as may be allowed, the Registrar shall strike the appeal off the list and shall issue an order for payment of the costs of the abandoned appeal. (Form No. 123).

**497.** It shall not be necessary for a respondent to give notice of motion by way of cross-appeal except in cases where the respondent intends to appeal upon his claim or counter-claim in the action, but if a respondent only intends upon the hearing of the appeal, to contend that the decision appealed against should be varied, he shall within five days after the notice of appeal has been served upon him, give notice of such intention to any parties who may be affected by such contention and shall forthwith file such notice with proof of service. The omission to give such notice shall not diminish the power of the Court but may in the discretion of the Court be ground for an adjournment of the appeal or for a special order as to costs.

**498.** The time limited by Rules 491-497 may be extended by a written consent or by a judge of the Appellate Division.

(ii) *Stay of Execution Pending Appeal*

**499.** The Judge at the trial may stay the entry of judgment or the issue of execution for a period not exceeding thirty days.

**500.**—(1) Unless otherwise ordered by a Judge of a Divisional Court the execution of the judgment appealed from shall, upon an appeal being set down to be heard, be stayed, pending the appeal, but if the judgment appealed from awards a mandamus or an injunction, execution shall not be stayed unless so ordered by the Judge appealed from or by a Judge of a Divisional Court.

(2) Where leave to appeal from an interlocutory order is granted the Judge hearing the application may give directions as to staying proceedings.

**501.** Where an execution has been issued and is thereafter stayed upon an appeal, the appellant shall be entitled to obtain a certificate from the Registrar of the Appellate Division that the execution has been stayed pending the appeal, and upon the certificate being lodged with the sheriff

the execution shall be superseded, but the execution debtor shall pay the sheriff's fees; and the sum so paid shall be allowed to him as part of the costs of the appeal.

**502.** Where the execution of a judgment is stayed pending an appeal, all further proceedings in the action, other than the issue of the judgment, and the taxation of costs thereunder, shall be stayed, unless otherwise ordered by a Judge of a Divisional Court.

(iii) *Default and Disagreement of Jury*

**503.** Where a party does not appear at the trial, the judgment may be set aside and a new trial ordered by the Judge presiding at the sittings, or by a Judge.

**504.** Where the Jury disagree the action may be re-tried at the same sittings or at any subsequent sittings as may be directed.

**505.**—(1) Where a jury is directed to answer questions, and answers some but not all, or where the answers are conflicting so that judgment cannot be entered upon such findings, the action shall be re-tried as in the case of a disagreement.

(2) If the answers entitle either party to judgment as to some but not to all the causes of action, the judge may direct judgment to be entered on the causes of action as to which the answers are sufficient, and the issues upon the remaining causes of action shall then be re-tried as upon a disagreement.

(iv) *Appeals from Masters and Referees—Local Judges and Officers in Chambers*

**506.** Every report or certificate of a Master shall be filed and shall be deemed to be confirmed at the expiration of fourteen days from the date of service of notice of filing the same, unless notice of appeal is served within that time.

**507.** An appeal from the report or certificate of a Master or Referee shall be to the Court upon seven clear days' notice, and shall be returnable within one month from the date of service of notice of filing of the report or certificate.

**508.**—(1) A person affected by an order of the Master upon any application heard by him under Rule 208, a Local Judge, Local Master or other officer in Chambers, or of a Master under the authority of Rule 433, may appeal therefrom to a Judge in Chambers.

(2) The appeal shall be by motion, on notice served within four days and returnable within ten days after the decision complained of.

(3) The appeal shall not be a stay of proceedings unless ordered by a Judge or by the officer whose decision is complained of.

(4) Where the judgment, order or decision is made or given in vacation, a person affected thereby may, if the matter is urgent, appeal therefrom during vacation to the Vacation Judge, or may appeal after vacation in the same manner and within the same time as if the judgment, order or decision had been made on the first day after vacation.

(5) Appeals in Chambers shall be argued by Counsel.

**509.** Any person affected by a judgment or order of a Local Judge in Court may appeal therefrom to a Judge in Court, and such appeal shall be brought within the time and upon the like notice and proceedings as in cases of appeals from orders and decisions of Local Judges in Chambers,

(v) *Appeals from Taxation*

**510.**—(1) An appeal from the report or certificate of an officer to whom the taxation of a solicitor's bill under *The Solicitors Act* has been referred shall lie and may be brought in the same manner as in the case of the report of a Master.

(2) In other cases a party dissatisfied with the decision of a taxing officer upon any question of principle or as to any item respecting which objections have been duly filed, may appeal from the certificate of a taxing officer to a Judge in Chambers; the practice upon the appeal shall be the same as upon an appeal from an order made by the Master.

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## CHAPTER XVIII

### FORM OF JUDGMENTS AND ORDERS, ETC.

**511.** Judgments and orders shall be divided into convenient paragraphs, numbered consecutively.

**512.** It shall not be necessary in any judgment or order to reserve liberty to apply, but any party may apply to the Court from time to time as he may be advised.

**513.** Every judgment or order shall show on its face the day of the week and month on which it was given or made and every judgment shall also show the date upon which it is actually signed, and (except judgments signed by default and *praecipe* orders) shall show the name or names of the Judge or officer who gave or made the same, and shall take effect from its date. (Forms Nos. 62 and 63).

**514.** An order for payment of money into Court on behalf of, or as the property of, an infant shall, unless otherwise directed, state the date of the birth of the infant.

**515.** All judgments and orders directing payment of costs shall direct payment to the party entitled to receive the same and not to his solicitor.

**516.**—(1) Every judgment, and every order pronounced in Court, shall be entered at full length.

(2) Judgment in causes and matters commenced in the Central Office, and all orders made in Court or Chambers in Toronto, shall be entered in the Registrar's Office.

(3) Judgments in causes or matters commenced in a local office and all orders made therein not entered at Toronto shall be entered in the office in which the cause or matter was commenced.

(4) Orders issued on *praecipe* and orders made in Chambers, shall not be entered in full, except:

Orders declaring persons Lunatics; or and with respect to Lunatics' Estates;

Orders for the Sale of Infants' Estates;

Orders for Payment of Money into or out of Court, or out of an estate or fund;

Orders for Foreclosure or Sale;

Orders for the confirmation of the report of a Master or Referee;

Orders vacating certificates of *lis pendens* or cautions.

Vesting Orders;

and such other orders as may from time to time be directed to be entered.

(5) Where an order made in Chambers is not required to be entered in full, a copy thereof shall be filed and a memorandum showing the issue of the order shall be made by the Entering Clerk.

**517.** The Entering Clerk shall note in the margin of the judgment or order book the day of entering, and shall at the foot of the judgment or order note the same date and a reference to the book in which the entry has been made.

**518.** All judgments and orders of a Divisional Court shall be entered in the Registrar's Office at Toronto, and if the action was commenced elsewhere also in the office where the action was commenced.

**519.**—(1) Any judgment in a mortgage action may direct in general terms that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for redemption or foreclosure (or for redemption or sale, as the case may be) and that for these purposes the cause is referred to (*naming the Master*).

(2) Any judgment directing a sale may so direct in general terms and refer the action to the Master for that purpose.

(3) Any judgment directing partition or administration may be in general terms.

(4) Any judgment in general terms shall confer upon the Master all the powers given by these rules and all other powers necessary to enable him to carry the judgment into full effect.

**520.** Any judgment by default may be set aside upon an application in Chambers.

**521.** Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected upon an application in Chambers.

**522.** Where a judgment or order requires amendment in any particular on which the Court did not adjudicate, the same may be amended on motion.

**523.** A party entitled to maintain an action for the reversal or variation of a judgment or order, upon the ground of matter arising subsequent to the making thereof, or subsequently discovered, or to impeach a judgment or order on the ground of fraud, or to suspend the operation of a judgment or order, or to carry a judgment or order into operation, or to any further or other relief than that originally awarded may move in the action for the relief claimed.

**524.** Upon the production of the order of His Majesty in His Privy Council, made upon an appeal to His Majesty in Council, or of the certificate of the Registrar of the Supreme Court of Canada upon an appeal to that Court, the officer of this Court with whom the judgment or order appealed from was entered shall cause the order of His Majesty in His Privy Council or the certificate of the Supreme Court to be entered in the judgment book, and all subsequent proceedings may be taken thereupon as if the decision had been given in this Court.

**525.** Every judgment and order by which a judgment is affirmed, reversed, set aside, varied, or in any way modified, shall, in addition to any other entry thereof, be entered in the office where the original judgment or order is entered.

**526.** Judgments and orders pronounced in trials at Toronto shall be settled by the Registrar to whom is assigned the duty of settling judgments.

**527.**—(1) Judgments in cases tried elsewhere than at Toronto shall be settled by the Local Registrar or other officer acting as Registrar at the place of trial, unless any party affected applies to the Registrar at Toronto to whom is assigned the duty of settling judgments to settle the same, or to reconsider the settlement of the same by the local officer.

(2) When settled the minutes may be varied by the Trial Judge on the application of either party.

**528.** Notice of settling minutes of a judgment or order other than a simple judgment or order for recovery of a sum certain with or without costs or dismissing an action or motion shall be given unless dispensed with by the officer by whom the judgment or order is to be settled, and the proposed minutes of the judgment or order shall be served or left in his office for inspection, and any party may take a copy thereof.

**529.** Where judgment may be signed upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced and ascertain that it is regular and sufficient.

**530.** Where a judgment or order is obtained upon a condition, and the condition is not complied with, the judgment or order shall be deemed to have been waived or abandoned as far as the same is beneficial to the person obtaining the same, and any person interested in the matter, on the breach or non-performance of the condition, may either take such proceedings as the judgment or order in such case may warrant, or such proceedings as might have been taken if the judgment or order had not been made.

**531.**—(1) Every judgment shall be signed by the Registrar or by the proper officer in whose office the action was commenced.

(2) Every judgment or order pronounced by the Court or by a judge in Chambers shall be settled and signed by the Registrar or officer attending the Court or Chambers at which the same is pronounced, but the Judge pronouncing such order may himself settle or sign the same.

(3) Orders made by an officer sitting in Chambers shall be signed by him.

(4) Orders made by a Judge of the Appellate Division shall be settled and signed by the Registrar or by the Judge.

**532.**—(1) In order to acknowledge satisfaction of a judgment, a satisfaction-piece shall be signed by the party acknowledging the same or his personal representative, and his signature shall, unless the Court expressly dispenses therewith, be witnessed by some practising solicitor, expressly named by him, and attending at his request to inform him of the nature and effect of such satisfaction-piece before the same is signed.

(2) The solicitor shall declare himself in the attestation thereto to be the solicitor for the person so signing the same, and state that he is witness as such solicitor; and in cases where the satisfaction-piece is signed by the personal representative of a party deceased, his representative character shall be proved by the production of the probate of the will, or of the letters of administration (or a certified copy), to the officer having custody of the judgment.

(3) The satisfaction-piece shall be filed in the office in which the judgment is entered, and a note thereof shall be made in the book where the judgment is entered. (Form No. 130).

## CHAPTER XIX

### ENFORCEMENT OF JUDGMENTS AND ORDERS

**533.** A judgment for the recovery by or payment to any person of money may be enforced by the issue of a writ of execution against the goods and chattels, lands and tenements of the debtor, but if the amount due on the judgment is less than \$40.00 no execution shall issue against lands and tenements. (Form No. 108).

**534.** Any judgment for the payment of money into Court may be enforced in the same way as a judgment for payment to any person, and the person having the carriage of the judgment shall be deemed to be a judgment creditor for the purpose of its enforcement.

**535.** A judgment for the recovery of money on behalf of an infant, lunatic, or person of unsound mind or on behalf of a class shall direct the money to be paid into Court, and no payment to the guardian, next friend, or committee of money of such infant or person of unsound mind, or person having the conduct of the proceedings on behalf of the class, shall be a valid discharge as against the infant or person of unsound mind, or the class.

**536.** Every writ of execution for the levying of any money to be paid into Court shall be indorsed by the officer issuing the same with the following notice: "All money made under this execution is to be paid into Court by the Sheriff."

**537.** Where any party is by a judgment entitled to any relief subject to or upon the fulfilment of any condition or contingency, he may, upon the fulfilment of the condition or contingency, apply for leave to issue execution.

**538.** Every judgment creditor shall be entitled immediately to issue one or more writ or writs of *fieri facias*; but if the judgment is for payment within a period therein mentioned, the writ shall not be issued until after the expiration of such period.

**539.** When a Sheriff returns that he has "goods (or lands) on hand for want of buyers," a writ of *venditioni exponas* or a writ of *venditioni exponas* for part and *fieri facias* for the residue may be issued. The Sheriff may make this return by certificate and the original writ of execution shall remain in force for the residue. (Forms Nos. 112a and 113).

**540.** A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession. (Form No. 114).

**541.** Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person on or at any specified time after being served with the judgment, the person prosecuting the same shall without any further order for that purpose be entitled to issue a writ of possession, on filing an affidavit showing due service of the judgment and that the same has not been obeyed.

**542.** When a judgment directs recovery of any land and money, one writ or separate writs of execution for the recovery of possession and for the money may be issued at the election of the party entitled to recover.

**543.** A judgment for the recovery of dower may be enforced by a writ of assignment of dower, directed to the Sheriff of the County in which the lands lie; and the writ shall set forth the lands out of which the plaintiff is to recover dower. (Forms Nos. 119 and 120).

**544**—(1) Where a judgment directs the recovery of specific goods, chattels, deeds, securities, documents, or any property other than land or money, a writ of delivery may issue directing the sheriff to cause such goods or property to be delivered up in accordance with the judgment. (Form No. 115).

(2) If the goods and property are not delivered up by the judgment debtor and cannot be found and taken by the sheriff, the judgment creditor may apply for an order directing the sheriff to take goods and chattels of the judgment debtor to double the value of the property in question to be kept until the further order of the Court to enforce obedience to the judgment.

(3) By leave of the Court such judgment may also be enforced by attachment, committal, or sequestration.

**545.** A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by attachment, or by committal. (Form No. 117).

**546.** A writ of attachment shall not be issued without the leave of the Court or a Judge, on notice to the person against whom the attachment is to be issued.

**547.** Where a person is taken or detained in custody under a writ of attachment, without obeying the judgment, then upon the sheriff's return that the person has been so taken or detained, the party prosecuting the judgment shall be entitled upon motion to a writ of sequestration against the estate and effects of the disobedient person.

**548.** If an attachment cannot be executed against the person refusing or neglecting to obey the judgment, by reason of his being out of the jurisdiction of the Court, or of his having absconded, or that with due diligence he cannot be found, or if in any other case the Court may think proper

to dispense with a writ of attachment, an order may be granted for a writ of sequestration against the estate and effects of the disobedient person; and it shall not be necessary for that purpose to issue an attachment.

**549.** If a person who is ordered to pay money, neglects to obey the judgment, the Court may, upon the application of the party prosecuting the same, at the expiration of the time limited for performance, make an order for a writ of sequestration. (Form No. 118).

**550.** A writ of sequestration shall be directed to the Sheriff, unless otherwise ordered.

**551.** In case a person has been committed to gaol for contempt of Court, there to be detained and imprisoned until he shall have purged his contempt, if it be made to appear that he is in actual custody under such committal, the Court may modify the order and limit the term of imprisonment or grant such other relief as may in the nature and circumstances of the case seem just, but any relief that may be granted to any such person shall not relieve him from any civil liability.

**552.** If a *mandamus* granted in an action or otherwise, or a mandatory order, injunction, or judgment for specific performance of any contract is not complied with, the Court, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment has been obtained, or some other person appointed by the Court, at the cost of the disobedient party; and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue for the amount so ascertained and costs.

**553.** Any judgment against a Corporation wilfully disobeyed may be enforced by sequestration against the Corporation or by attachment against the directors or other officers of the Corporation.

**554.** Any Corporation or individual disobeying a judgment, or guilty of any other contempt of Court, may be fined. Such fine may be in lieu of or addition to punishment by attachment, committal or sequestration.

**555.** Any person not a party against whom obedience to a judgment may be enforced shall be liable to the same process and punishment as if he were a party.

**556.**—(1) Under an execution against one partner, partnership assets shall not be taken in execution, but an order may be made charging the partner's interest in the partner-

ship property and profits with the payment of the amount of the executions in the Sheriff's hands, and by the same or a subsequent order a receiver may be appointed of the partner's share of profits whether already declared or accruing and of any other money which may be coming to him in respect of the partnership, and the Court may direct all accounts and inquiries and give all such other directions as might be directed or given if the charge had been given by the partner.

(2) The other partners may redeem the interest charged or in event of a sale may purchase the same.

**557.** Where goods or chattels are seized in execution under a writ of *fieri facias*, the Sheriff, or his officers acting for him, shall, on request, deliver to the owner, his agent or servant, an inventory thereof before they are removed from the premises on which they have been so seized; and no Sheriff or other officer shall sell any goods or chattels under a writ of execution until he has previously thereto given at least eight days' public notice in writing of the time and place of sale in the most public place in the municipality where such goods or chattels have been seized.

**558.** The Sheriff shall where goods seized by him under a writ of *fieri facias* remain unsold in his hands for want of buyers, state in his return of "goods on hand for want of buyers," the time and place when and where such goods were offered for sale by him, and the names of at least three persons who were present at the time of such attempted sale, if so many were present, but if so many were not present, then the names of those who were present, if any, and that there were no others, and if no person was present then he shall state that fact.

**559.** The Sheriff shall not expose lands for sale under a writ of *fieri facias*, or sell the same within less than twelve months from the day on which the writ is delivered to him.

**560.** Where a writ of *fieri facias* is issued against an absconding debtor in an action in which an order for attachment has been issued, the Court may order the Sheriff to sell lands of the absconding debtor before the expiration of the twelve months.

**561.** A sale of lands shall not be had under any writ of *fieri facias* until after a return of *nulla bona*, in whole or in part, in the same action or matter by the Sheriff of the same county.

**562.** If the amount authorized to be made and levied under a writ of *fieri facias* is made and levied thereunder out of goods and chattels, the person issuing the writ shall

not be entitled to the expenses of any seizure or advertisement of lands thereunder; and the return to be made by the Sheriff to the writ for sale of lands shall be to the effect that the amount has been so made and levied as aforesaid.

**563.** Before the sale of lands under a writ of *fieri facias*, the Sheriff shall publish once, not less than three months and not more than four months preceding the sale, an advertisement of sale, in the *Ontario Gazette*, specifying:

- (a) The property to be sold;
- (b) The name of the plaintiff and defendant;
- (c) The time and place of the intended sale;
- (d) The name of the debtor whose interest is to be sold;

and he shall, upon one day at least in each week for four successive weeks next preceding the sale, also publish such advertisement in a public newspaper of the County or District in which the lands lie; and he shall also for three months preceding the sale, put up and continue a notice of such sale in the office of the Clerk of the Peace, and on the door of the Court House or place in which the General Sessions of the Peace of the County or District is usually holden; but nothing herein contained shall be taken to prevent an adjournment of the sale to a future day.

**564.** The advertisement in the *Ontario Gazette* of any lands for sale under a writ of *fieri facias*, during the currency of the writ, shall be deemed a sufficient commencement of the execution to enable the same to be completed by a sale and conveyance of the lands after the writ has become returnable.

**565.** As between the original parties to a judgment, execution may, without leave, issue at any time within six years from the date of the same.

**566.** Where the six years have elapsed or any change has taken place by death or otherwise in the parties entitled or liable to execution, or where a party is entitled to execution upon a judgment of assets *in futuro*, the party alleging himself to be entitled to execution may apply for leave to issue execution accordingly or to amend any execution already issued. (Form No. 85).

**567.** Every writ of execution shall be indorsed with the name and address of the solicitor issuing the same; and if he issues the same as agent for another solicitor, the name and address of such other solicitor shall also be indorsed. Where the writ is issued by a suitor in person his name and address shall be indorsed.

**568.** Every writ of execution for the recovery of money shall be indorsed with a direction to the officer to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon at the rate of 5 per cent. per annum from the time when the judgment was entered.

**569.** The officer issuing the writ or renewal thereof shall indorse upon the same a memorandum signed by him of the amount which the party issuing such writ is entitled to receive for the costs of such writ, and any renewal and for any further or other writs or renewals, and no sum not so indorsed is to be collected for such costs.

**570.** Upon every execution there may be levied, in addition to the sum recovered by the judgment and interest thereon, the poundage, fees, and expenses of execution.

**571.** A writ of *fieri facias* shall remain in force for three years from its issue, unless renewed before its expiration, when it shall be in force for a further period of three years from the date of such renewal, and so on from time to time. A writ may be renewed by being marked in the margin with a memorandum signed by the proper officer, stating the date of the day, month and year of such renewal, or by a certificate of renewal signed by such officer; a writ so marked (or if renewed by certificate the certificate) shall be placed in the hands of the Sheriff before its expiry, when it shall have effect and be entitled to priority, according to the time of the original delivery thereof.

**572.** The Sheriff to whom a writ is directed shall indorse on such writ all returns thereto and shall give a certificate thereof when demanded, which certificate shall be deemed a return. (Form No. 121).

**573.** Where the party who delivered any writ or process to any Sheriff to be executed, or any other person entitled to call for a return requires, by a demand in writing, the Sheriff to return the writ either by returning the writ to the Court from which the writ issued, or by granting a certificate under the preceding rule, the Sheriff shall, within eight days, return the writ according to the terms of the requisition; and if he wilfully refuses or neglects to do so, he may be ordered to return the writ, and may be further proceeded against as in other cases of contumacy.

**574.** Upon filing the demand and proof of service an order against the Sheriff to return the writ in six days from service shall be issued on *praecipe*.

**575.** Personal service of the demand or order on the Sheriff shall not be necessary, if it appears by affidavit that inquiry was made for him, and that he could not conveniently be found, and the demand or order was served upon the Sheriff's clerk, or bailiff in, or having charge of, the Sheriff's office.

**576.** Where a Sheriff neglects or refuses to return any writ when so demanded, he may be ordered to pay the costs of any order taken out to compel the return, and all other costs consequent thereon, and also the costs of the previous demand.

**577.** Where the Sheriff is ordered to return a writ, and does not make the return within the time specified in the order, the Court may order the Sheriff to be attached, or direct that an attachment shall issue unless a return be made within a limited time.

**578.** If the writ is not returned at the expiration of any further time limited, and if the service of the order and the failure of the Sheriff to return the writ are proved, the Court may order the attachment to issue forthwith against the Sheriff upon an *ex parte* application.

**579.** The Sheriff when required to return a writ to the Court, shall file the writ or his certificate under Rule 572, in the office from which the order to return the same was issued, and the officer with whom it is filed shall indorse the day and hour when it was filed.

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## CHAPTER XX

### EXAMINATION OF JUDGMENT DEBTORS AND ATTACHMENT OF DEBTS

**580.** A judgment creditor may, without an order, examine the judgment debtor upon oath before the proper officer of the County in which he resides, touching his estate and effects, and as to the property and means he had when the debt or liability which was the subject of the cause or matter in which judgment has been obtained against him was incurred (or in the case of a judgment for costs only, at the time of the commencement of the cause or matter), and as to the property and means he still has of discharging the judgment, and as to the disposal he has made of any property since contracting such debt or incurring such liability (or in case of a judgment for costs only, since the commencement of the cause or matter), and as to any and what debts are owing to him.

**581.** Where the judgment is against a corporation the judgment creditor, may in like manner examine any of the officers of such corporation, touching the names and residences of the stockholders in the corporation, the amount and particulars of stock held or owned by each stockholder and the amount paid thereon, and as to what debts are owing to the corporation, and as to the estate and effects of the corporation; and as to the disposal made by it of any property since contracting the debt or liability in respect of which the judgment was obtained, or, in the case of a judgment for costs only, since the commencement of the cause or matter.

**582.** The Court may order any clerk or employee or former clerk or employee of the judgment debtor, or any person or the officer or officers of any corporation to whom the debtor has made a transfer of his property or effects, exigible under execution, since the date when the liability or debt which was the subject of the action in which judgment was obtained was incurred (or where the judgment is for costs only since the commencement of the cause or matter) to submit to be examined upon oath as to the estate and effects of the debtor, and as to the property and means he had when the debt or liability aforesaid was incurred (or in the case of a judgment for costs only, at the date of the commencement of the cause or matter) and as to the property or means he still has of discharging the judgment, and as to the disposal he has made of any property since contracting the debt or incurring the liability, and as to any and what debts are owing to him.

**583.** Where the Court is satisfied that there is reasonable ground for supposing that any person or corporation is in possession of any property of the judgment debtor exigible under execution, it may order such person or any officer of said corporation to attend and submit to examination touching the property and means of the judgment debtor.

**584.** Where a difficulty arises in or about the execution or enforcement of a judgment, the Court may make such order for the attendance and examination of any party or person as may seem just.

**585.** A person liable to be examined under the preceding Rules may be compelled to attend and testify, and to produce books and documents, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness.

**586.** A person liable to be examined as a judgment debtor or as an officer of a corporation which is a judgment debtor need not be served with a subpoena, but may be served with an appointment signed by the officer before whom he is to be examined at least 48 hours before the time fixed for his examination, and the person to be examined shall be paid the same fees as a witness.

**587.** Where the judgment debtor does not attend, does not allege a sufficient excuse for not attending, or if attending, refuses to disclose his property or his transactions, or does not make satisfactory answers respecting the same, or if it appears from such examination that such debtor has concealed or made away with his property in order to defeat or defraud his creditors or any of them, the Court may order the debtor to be committed to the common gaol of the County or district in which he resides, for any term not exceeding twelve months; or that a writ of *capias ad satisfaciendum* may be issued against the debtor, or in case the debtor is at large upon bail, may make an order for his committal to close custody; and the Sheriff, on due notice of the order, shall forthwith take the debtor and commit him to close custody until he obtains an order allowing him to go out of close custody, on giving the necessary bond in that behalf, or until he is otherwise discharged in due course of law.

**588.** Where any officer of a corporation or other person liable to be examined does not attend, and does not show a sufficient excuse for not attending, or if attending, refuses to disclose any of the matters in respect of which he may be examined, the Court may order him to be committed to the common gaol of the County or district in which he resides, for any term not exceeding six months.

**589.** Where a person has been committed to goal, the Court may limit the term of imprisonment or grant such other relief as may seem just, but the order shall not relieve such person from any civil liability to any other person.

**590.**—(1) The Court, upon the *ex-parte* application of the judgment creditor, upon affidavit stating that the judgment is unsatisfied and

- (a) that some person within Ontario is indebted to the judgment debtor, or
- (b) that some person not within Ontario is indebted to the judgment debtor and that the debt to be attached is one for which such person might be sued in Ontario by the judgment debtor,

may order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor, shall be attached to answer the judgment debt and that the garnishee do at a time named show cause why he should not pay the judgment creditor the debt due from the garnishee to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment debt and the claims of any other execution creditors. Notice of the application to pay over shall, unless dispensed with, be given to the judgment debtor. (Form No. 72).

(2) When the garnishee is not within Ontario, and is neither a British subject nor in British dominions, notice of the order and not the order itself shall be served. (Form No. 73).

(3) Where a debt owing from a firm carrying on business within Ontario, but having members out of Ontario, is attached, service may be effected upon any person having control or management of the partnership business or any member of the firm within Ontario.

**591.** The garnishee shall be deemed to be indebted, although any debt sought to be attached has been assigned, charged or incumbered by the judgment debtor, if the assignment, charge or incumbrance is fraudulent as against creditors or is otherwise impeachable by them.

**592.** The order from the time of service shall bind the debts attached.

**593.** If the garnishee admits his liability he may pay the amount admitted into Court, less \$3 for his costs of paying in, and give notice of such payment to the judgment creditor.

**594.**—(1) If the garnishee does not pay into Court the amount due from him to the judgment debtor, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon notice to him, then the Court may order payment into Court of the debt. (Form No. 74).

(2) If the debt be not payable at the time of the attachment, an order may be made for the payment thereof when it becomes payable.

**595.** If the garnishee disputes his liability, the Court may determine the dispute in a summary way or may order that an issue be tried in such manner as may be directed.

**596.**—(1) Where a garnishee has notice of any assignment of the debt or of any claim thereto or charge thereon he shall give notice thereof and the Court may order the assignee or the claimant to appear and state the nature and particulars of his claim.

(2) After hearing the allegations of such third person, and of any other person who by the same or any subsequent order may be ordered to appear, or in case of such third person not appearing when ordered, the Court may order payment of the amount due from the garnishee, or may order an issue to be tried, or may bar the claim of the third person, or may make such other order as may seem just.

**597.** Where the debt claimed to be due or accruing from a garnishee is of the amount recoverable in a County Court, the order to show cause shall require the garnishee to appear before the Judge of the County Court of the County within which the garnishee resides, on a day and at a place within his County to be appointed by such Judge; and the garnishee shall be served with notice of the day and place appointed. All subsequent proceedings shall then be taken and carried on before such Judge.

**598.**—(1) Where the debt claimed to be due or accruing from a garnishee is of the amount recoverable in a Division Court, the order to show cause shall require the garnishee to appear before the Judge of the Division Court within whose Division the garnishee resides, on a day to be appointed in writing by such Judge, and the garnishee shall be served with notice of the day appointed.

(2) The proceedings shall thereafter be carried on before the Judge as though the garnishee summons had issued out of the said Division Court, and all proceedings may thereafter be carried on in the Division Court, and execution may be issued in the Division Court to enforce any order or judgment made.

**599.** Payment into Court or under an order by the garnishee shall be a valid discharge to him, as against the judgment debtor, or any assignee or claimant of whose claim he has given notice and who has been called upon to show cause under the preceding rules.

## CHAPTER XXI

### ORIGINATING NOTICES

**600.** The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, or any person claiming to be interested in the relief sought as creditor, devisee, legatee, next-of-kin or heir-

at-law of a deceased person, or as *cestui que trust* under the trusts of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may apply by originating notice for the determination without an administration of the estate or trust of any of the following question or matters:

- (a) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next-of-kin or heir-at-law, or *cestui que trust*.
- (b) The ascertainment of any class of creditors, legatees, devisees, next-of-kin, or others.
- (c) The furnishing of any particular accounts by the executors or administrators or trustees and the vouching (where necessary) of such accounts.
- (d) The payment into Court of any money in the hands of the executors or administrators or trustees.
- (e) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees.
- (f) The approval of any sale, purchase, compromise or other transaction.
- (g) The opinion, advice or direction of a Judge pursuant to *The Trustee Act*.
- (h) The determination of any question arising in the administration of the estate or trust.
- (i) The fixing of the compensation of any executor, administrator or trustee.

**601.**—(1) The persons to be served with notice under the next preceding Rule in the first instance shall be as follows:

1. Where the notice is served by an executor or administrator or trustee,—

- (a) For the determination of any question under clauses (a), (e), (f), (g), (h), or (i),

the persons or one of the persons whose rights or interests are sought to be affected;

- (b) For the determination of any question under clause (b),

any member or alleged member of the class;

(c) For the determination of any question under clause (c),

any person interested in taking such accounts;

(d) For the determination of any question under clause (d),

any person interested in such money;

(e) If there are more than one executor or administrator or trustee, and they do not all concur in the service of the notice,

those who do not concur.

2. Where the notice is served by any person other than the executors, administrators or trustees, it shall be served upon the executors, administrators or trustees, and upon one or more of the persons interested adversely to the applicant.

(2) The Judge before whom the motion is returnable may direct such other persons to be served as he may deem proper.

**602.** When upon an originating notice under *The Vendors' and Purchasers' Act* it appears that some third person is or may be interested in the question raised, the Court may require notice to be given to such person so that the question may be determined not only as between the vendor and purchaser, but so as to bind such third person.

**603.**—(1) Where any person claims to be the owner of land, but does not desire to have his title thereto quieted under *The Quieting Titles Act*, he may have any particular question which would arise upon an application to have his title quieted determined upon an originating notice.

(2) Notice shall be given to all persons to whom notice would be given under *The Quieting Titles Act*, and the Court shall have the same power finally to dispose of and determine such particular question as it would have under the said Act, but this shall not render it necessary to give the notice required by Rule 705.

**604.** Where the rights of any person depend upon the construction of any deed, will or other instrument, he may apply by originating notice, upon notice to all persons concerned, to have his rights declared and determined.

**605.**—(1) Where the rights of the parties depend,—

- (a) Upon the construction of any contract or agreement and there are no material facts in dispute;
- (b) Upon undisputed facts and the proper inference from such facts;

such rights may be determined upon originating notice.

(2) A contract or agreement may be construed before there has been a breach thereof.

**606.**—(1) The Judge may summarily dispose of the questions arising on an originating notice and give such judgment as the nature of the case may require, or may give such directions as he may think proper for the trial of any questions arising upon the application.

(2) Any special directions, touching the carriage or execution of the judgment or order or the service thereof upon persons not parties, may be given as may be deemed proper.

**607.** Service of an originating notice shall not interfere with or control any power or discretion vested in any executor, administrator or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

## CHAPTER XXII

### ADMINISTRATION, PARTITION, INFANTS' ESTATES AND DOWER

#### (i) *Administration*

**608.** Any person claiming to be a creditor, or a specific, pecuniary, or residuary legatee, or the next-of-kin, or one of the next-of-kin, or the heir, or a devisee interested under the will of a deceased person may apply by originating notice for the administration of the estate, real or personal, of such deceased person. (Form of Order No. 99.)

**609.** A judgment for the administration of an estate in which an infant or a lunatic who has no committee except the Public Trustee is interested, shall not be made unless the infant or lunatic is made a party defendant and notice is given to the Official Guardian. Notice of such application shall, unless otherwise ordered, also be given to such lunatic.

**610.** An executor or administrator may, upon summary application, obtain a judgment for administration.

**611.**—(1) Where judgment for administration is granted the Master to whom the matter is referred shall proceed to administer the estate in the most expeditious and least expensive manner, and in doing so shall, without special direction, take,—

- (a) An account of the personal estate of the deceased, come to the hands of his executor or administrator;
- (b) An account of his debts;
- (c) An account of his funeral expenses;
- (d) An account of the said testator's legacies;
- (e) An inquiry as to what parts, if any, of the real and personal estate are outstanding or disposed of;
- (f) An inquiry as to what real estate the deceased was seised of, or entitled to, at the time of his death;
- (g) An inquiry as to what incumbrances affect the real estate;
- (h) An account of the rents and profits of the real estate received by any party since the death;
- (i) An account of what is due to such of the incumbrancers as shall consent to sale in respect of their incumbrances;
- (j) An inquiry as to what are the priorities of such last-mentioned incumbrances.

(2) The Master shall, under any such reference, have power to deal with both the real and personal estate, including the power to give all necessary directions for its realization, and shall finally wind up all matters connected with the estate, without any further directions, and without any separate interim, or interlocutory reports or orders, except where the special circumstances of the case absolutely call therefor.

(3) All money realized from the estate shall forthwith be paid into Court, and no money shall be distributed or paid out for costs or otherwise without an order of a Judge, and on the application for an order for distribution the Judge may review, amend, or refer back the report, or make such other order as may seem just.

**612.** It shall not be obligatory on the Court to pronounce or make a judgment or order for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

**613.** In any action or proceeding for the administration or execution of trusts by a creditor or beneficiary under a will, intestacy or instrument of trust, where no accounts or insufficient accounts have been rendered, the Court may, instead of pronouncing judgment for administration:

- (a) Order that the executors, administrators or trustees, shall render to the plaintiff or applicant a proper statement of their accounts, with an intimation that if it is not done they may be made to pay the costs of the proceedings, and may direct the action or proceeding to be stayed or to stand over in the meantime, as may seem just;
- (b) Where necessary, to prevent proceedings by other creditors, or by beneficiaries, make the usual judgment for administration, with a provision that no proceedings are to be taken thereunder without the leave of the Court.

**614.** Special directions touching the carriage or execution of the judgment may be given as may be deemed expedient; and in case of applications by two or more persons, or classes of persons, judgment may be granted to one or more of the claimants as may seem just; the carriage of the judgment may be subsequently given to other persons interested.

(ii) *Partition*

**615.**—(1) An adult person entitled to compel partition of land or any estate or interest therein may, by originating notice served on one or more of the persons entitled to a share therein, apply for partition or sale. (Form of Order No. 100).

(2) Where an infant or a lunatic who has no committee except the Public Trustee is interested, he shall be made a party defendant before judgment, and notice shall be given to the Official Guardian. Notice of such application shall, unless otherwise ordered, also be given to such lunatic.

(3) The Master shall proceed in the least expensive and most expeditious manner, for partition or sale, the adding of parties, the ascertainment of the rights of the various persons interested, the taxation and payment of costs, and otherwise.

(4) All money realized shall forthwith be paid into Court, and no moneys shall be distributed or paid out for costs or otherwise, without an order of a Judge; and on the application for an order for distribution, the Judge may review, amend, or refer back to the Master his report or make such other order as may seem just.

**616.** An application for partition on behalf of an infant by his guardian or next friend may be made with the sanction of a Judge to be first obtained upon notice to the Official Guardian.

(iii) *Dower*

**617.** Where the right to dower is not disputed, either the dowress or the tenant of the freehold may apply upon originating notice for a writ for the assignment of dower.

(iv) *Infants' Estates*

**618.** All applications for the sale, mortgage, lease, or other disposition of an infant's estate shall be made to a Judge upon notice to the Official Guardian.

**619.**—(1) The affidavits filed shall state the nature and amount of the personal property to which the infant is entitled, the necessity of resorting to the real estate, its nature, value, and the annual profits thereof; the occupation of the lands to be disposed of, and state specifically the relief desired, and circumstances sufficient to justify the order sought.

(2) If an allowance for maintenance is desired, a case shall also be stated and made, to justify such an order, and to regulate the amount.

(3) If the appointment of a guardian is desired, a case shall be stated and made, for the appointment of the person proposed.

**620.**—(1) The consent of all infants over 16 years of age shall be filed, verified by an affidavit of a solicitor stating that the consent was read over by him to the infant and fully explained to and apparently understood by the infant.

(2) When so directed by the Judge, the infant shall be produced before him or before a Master, and shall be examined apart as to his consent.

(3) Where the infant is out of Ontario the Judge may direct inquiry as to the infant's consent in such manner as may seem proper.

**621.** Witnesses in support of the application may be examined *vivâ voce* before the Judge making the order or before a Master of the Supreme Court.

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## CHAPTER XXIII

### MANDAMUS, ETC.

**622.** Mandamus prohibition and *certiorari* may be granted upon a summary application by originating notice.

**623.** No writ of mandamus prohibition or *certiorari* shall be issued, but all necessary provisions shall be made in the judgment or order. (Forms Nos. 82 and 83).

**624.** The Court may require notice to be given to any person claiming any right or interest in the subject-matter of the application.

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## CHAPTER XXIV

### INTERPLEADER

**625.** Relief by way of interpleader may be granted:

- (a) Where the person seeking relief (hereinafter called the applicant) is under liability for any debt, money, goods or chattels, for or in respect of which he is, or expects to be, sued by two or more persons (hereinafter called the claimants) making adverse claim thereto;
- (b) Where the applicant is a Sheriff and claim is made to any money, goods, or chattels, lands or tenements, taken or intended to be taken in execution under a writ of execution, or to the proceeds or value thereof, by any person other than the person against whom the process issued.

**626.** The applicant shall satisfy the Court by affidavit, or otherwise:

- (a) That he claims no interest in the subject-matter in dispute, other than in respect of a lien or for charges or costs;

- (b) That he does not collude with any of the claimants; and
- (c) That he is willing to pay or transfer the subject-matter into Court, or to dispose of it as the Court may direct.

**627.** The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another.

**628.** Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons; and the Court may stay all proceedings in the action.

**629.** The applicant may make a motion calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

**630.** Where a claimant does not appear on the motion after having been served with a notice of motion calling on him to appear and maintain or relinquish his claim, or, having appeared, neglects or refuses to comply with any order made thereafter, an order may be made declaring him and all persons claiming under him to be for ever barred as against the applicant and all persons claiming under him, but the order shall not affect the rights of the claimants as between themselves. (Form No. 75).

**631.** Where the claimants appear on the motion, any claimant may be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or an issue between the claimants may be stated and tried, and in the latter case the order shall direct which of the claimants shall be plaintiff, and which defendant. (Forms Nos. 76 and 77).

**632.** The Court may, with the consent of both claimants, or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and, subject to appeal, decide the same in a summary manner. (Form No. 78).

**633.** Where the question is one of law, and the facts are not in dispute, the Court may decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Court.

**634.** Where goods or chattels have been seized in execution by Sheriff, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by

way of security for debt, the Court may order a sale, and direct the application of the proceeds of the sale in discharge of the amount due the claimant if it is not disputed, or that sufficient to answer the claim be paid into Court pending trial of the claim.

**635.** Where a Sheriff applies for relief by interpleader, and any execution creditor declines to join in contesting the claim of the adverse claimant, the Court may direct that such creditor shall be excluded from any benefit which may be derived from the contestation of the claim.

**636.** The Court which tries the issue may finally dispose of the interpleader proceedings, including all costs not otherwise provided for.

**637.** When a Sheriff finds property in the possession of a debtor against whose property he has a writ or other process in his hands, and a claim is set up to such property by or on behalf of a third person who is out of possession or is in joint possession with the debtor, the claim of such third person shall be made in writing, and upon receipt thereof the Sheriff shall forthwith give notice thereof to the execution creditor, and the execution creditor shall, within seven days thereafter, give notice to the Sheriff that he admits or disputes the claim. If the execution creditor admits the title of the claimant, and gives notice as directed by this Rule, he shall only be liable to such Sheriff for fees and expenses incurred before the receipt of the notice admitting the claim; and no action shall be brought against the Sheriff in respect of the seizure of the property.

**638.** Where the execution creditor does not in due time admit or dispute the title of the claimant to the property, and the claimant does not withdraw his claim thereto by notice in writing to the Sheriff, the Sheriff may apply for relief by interpleader.

**639.** In case a Sheriff has more than one writ of execution against the same property, or there is more than one claimant to goods seized under the execution, he shall make one application, and make all the execution creditors and claimants parties.

**640.** Where there is an execution from the Supreme Court the application for interpleader shall be made in the Supreme Court notwithstanding that other executions on the Sheriff's hands have issued from County or Division Courts.

**641.**—(1) Where an issue is directed to be tried, the costs of the Sheriff incurred in consequence of the adverse claim shall be a first lien or charge upon the moneys or goods which may be found in the issue to be applicable upon the execution.

(2) The Sheriff may also tax such costs, and serve a copy of the certificate of taxation upon each of the parties to the issue, and the successful party upon the issue shall tax such costs as part of his costs of the cause, and upon receipt thereof shall pay over the same to the Sheriff.

(3) Where after the service of the certificate the party succeeding upon the issue neglects or refuses to tax such costs, the Sheriff may obtain an order that the successful party shall pay the same.

(4) Where the proceedings are compromised between the parties thereto, the costs of the Sheriff shall be paid by the party by whom the execution was issued.

**642.** Where, after the seizure, an issue is directed, and the property seized remains, pending the trial of the issue, in the custody of the Sheriff who seized the same, the Court may make an order for the payment to the Sheriff of a reasonable sum for his trouble in and about the custody of the property; and the Sheriff shall have a lien upon the property for payment of the same in event of the property being held to be exigible against the claimant.

**643.** The Court may make all such orders respecting the satisfaction or payment of any lien or charges of the applicant as may be just and reasonable.

**644.**—(1) Relief by interpleader may be granted in a County Court,—

- (a) Where the applicant is sued in the County Court;
- (b) Where the applicant is not so sued and the debt, money, goods or chattels in question do not exceed in value \$500.

(2) Where the applicant is a Sheriff acting under a writ or writs of execution issued from a County Court or different County Courts the application may be made to the Judge of his own County.

**645.** All subsequent proceedings shall be had and taken in the County where the application is made; but the Judge to whom the application is made may order that the subsequent proceedings be had and taken in any other County, if that course seems just and more convenient.

**646.** Where the amount claimed under or by virtue of writs of execution, in the Sheriff's hands, does not exceed the sum of \$400, exclusive of interest and Sheriff's costs, or when the goods seized are not, in the opinion of the Judge or other person making the order, of the value of more than \$400, the issue may be directed to be tried in a County Court and in such case all subsequent proceedings shall be had and taken in the County Court.

**647.** Where the amount of the execution or the value of the goods does not exceed \$100, the issue may be directed to be tried in a Division Court, and thereafter all proceedings shall be carried on in such court.

**648.** When money has been paid into Court and an issue has been directed to be tried in the County or Division Court the money shall be paid out upon the order of the County or Division Court.

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## CHAPTER XXV

### COSTS

**649.** Where an action of the proper competence of a County Court is brought in the Supreme Court, or an action of the proper competence of a Division Court is brought in the Supreme Court, or in a County Court, and the Judge makes no order to the contrary the plaintiff shall recover only County Court costs, or Division Court costs, as the case may be, and the defendant shall be entitled to tax his costs of suit as between solicitor and client; and so much thereof as exceeds the taxable costs of defence which would have been incurred in the County Court or Division Court, shall, on entering judgment, be set off and allowed by the Taxing Officer against the plaintiff's County Court or Division Court costs to be taxed, or against the costs to be taxed and the amount of the verdict if it be necessary; and if the amount of costs so set off exceeds the amount of the plaintiff's verdict and taxed costs, the defendant shall be entitled to execution for the excess against the plaintiff.

**650.** Where judgment is entered for default and the action is within the jurisdiction of an inferior Court, the taxation shall be on the scale of fees in such Court.

**651.** The Taxing Officer may make all inquiries necessary to determine whether an action is within the competence of an inferior Court.

**652.**—(1) A judgment or order may direct payment of a sum in gross in lieu of taxed costs.

(2) No sum in excess of \$30 shall be allowed, without taxation, save by a Judge.

(3) In all cases where infants or lunatics are concerned and are represented by the Official Guardian, the Taxing Officer may fix costs at a sum gross to be inserted in the order.

**653.**—(1) In actions or proceedings for administration, or partition, or administration and partition, unless otherwise ordered by a Judge, instead of the costs being allowed according to the tariff, each person properly represented by a solicitor, and entitled to costs out of the estate—other than creditors not parties to the action or proceeding—shall be entitled to his actual disbursements in the action or proceeding, not including counsel fees, and there shall be allowed, for the other costs of the suit payable out of the estate, a commission on the amount realized, or on the value of the property partitioned, which commission shall be apportioned among the persons entitled to costs, as may seem just. Such commission shall be as follows:

On the first \$500 . . . . .	20 per cent.
On every additional \$100 over \$500 and up to \$1,500 . . . . .	5 " "
On every additional \$100 over \$1,500 and up to \$4,000 . . . . .	3 " "
On every additional \$1,000 over \$4,000 and up to \$10,000 . . . . .	2½ " "
On every additional \$1,000 over \$10,000 . . .	1 " "

and such remuneration shall be in lieu of all fees, whether between party and party or between solicitor and client.

(2) Where an order or judgment in any such action or proceeding by any form of words directs that the costs thereof be taxed, it shall be taken to mean the allowance of commission and disbursements, in accordance with subsection 1, unless it is otherwise expressly provided.

**654.** The costs of every interlocutory *vivæ voce* examination and cross-examination shall be borne by the party who examines unless, as to the whole or part thereof, it be otherwise directed, in actions in the Supreme Court by the Taxing Officer at Toronto, on his appointment served, and in actions in a County Court by a Judge thereof.

**655.** Where the Official Guardian or other guardian of an infant, lunatic, or person of unsound mind, is entitled to costs, the Court may order a successful party to pay such costs and add them to his own.

**656.** Where several actions are brought on one bond, recognizance, promissory note, bill of exchange, or other instrument, or where, several actions are brought against the maker and indorser of a note, or against the drawer, acceptor or indorser of a bill of exchange, there shall be collected or recovered the costs taxed in one action only, at the election of the plaintiff, and the actual disbursements only in the other actions, unless the Court otherwise orders; but this provision shall not extend to any interlocutory costs.

**657.** Where any one of the persons constituting a class formed by a Master for representation in his office by one solicitor insists on being represented by a different solicitor, he shall pay the costs of his own solicitor and all such further costs as are occasioned to any of the parties by his being represented by a different solicitor from the solicitor so nominated.

**658.** No *ex parte* order in an action shall contain any direction as to costs, but the costs of any such motion shall be dealt with by the Taxing Officer.

**659.** Costs claimed upon a specially indorsed writ may be taxed although paid, and if more than one-sixth be taxed off the plaintiff's solicitor shall bear the cost of taxation.

**660.**—(1) Unless otherwise ordered, if a party who serves a notice of motion does not set the motion down, he shall be deemed to have abandoned the same, and the opposite party shall thereupon be entitled without an order to the costs of the motion.

(2) A party who serves a notice of motion may countermand the same by notice served on the opposite party, who shall thereupon be entitled to the costs of the motion.

(3) In either of such cases the costs may be taxed without an order, upon the production of the notice of motion served, with an affidavit that the motion was not set down, or of the notice of countermand served; and if the costs are not paid within four days from taxation, the party entitled thereto may issue an execution therefor.

**661.**—(1) Where costs are ordered to be paid, they may be taxed either by the Taxing Officer at Toronto or by the proper officer where the proceedings are begun.

(2) On the signing of default judgment the officer signing judgment may fix and ascertain costs without taxation.

**662.** Where a notice of taxation is necessary, one day's notice shall be sufficient if served with a copy of the bill of costs and affidavit of disbursements.

**663.** The Taxing Officer may direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and disallow the costs of any person whose attendance he considers unnecessary in consequence of the interest of the party in the fund or estate being small or remote, or sufficiently protected by other parties interested.

**664.** Where any party entitled to costs refuses or neglects to bring in his bill of costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the Taxing Officer shall certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

**665.** Where a party entitled to receive costs is liable to pay costs to any other party, the Taxing Officer may adjust the same by way of deduction or set off.

**666.** A set-off of damages or costs between parties shall not be allowed to the prejudice of the solicitor's lien for costs in the particular action in which the set-off is sought; but interlocutory costs in the same action awarded to the adverse party may be set off notwithstanding any lien.

**667.** Between party and party the Taxing Officer shall not allow the costs of proceedings:

- (a) Unnecessarily taken;
- (b) Not calculated to advance the interests of the party on whose behalf the same were taken;
- (c) Incurred through overcaution, negligence or mistake;  
or
- (d) Which do not appear to have been necessary or proper for the attainment of justice or defending the rights of the party.

**668.** Upon a taxation between a solicitor and his client, the Taxing Officer may allow the costs of proceedings taken which were in fact unnecessary where he is of the opinion that such proceedings were taken by the solicitor because, in his judgment, reasonably exercised, they were conducive to the interests of his client, and may allow the costs of proceedings which were not calculated to advance the interest

of the client where the same were taken by the desire of the client after being informed by his solicitor that they were unnecessary and not calculated to advance his interests. This rule shall not apply to solicitor and client costs payable out of a fund not wholly belonging to the client, or by a third party.

**669.** Where two or more defendants defend by different solicitors under circumstances entitling them to but one set of costs, the Taxing Officer shall allow but one set of costs; and if two or more defendants defending by the same solicitor separate unnecessarily in their defences, or otherwise, the Taxing Officer shall allow but one defence and set of costs.

**670.** It shall be the duty of the Taxing Officer, without any direction, to disallow in whole or in part the costs of any writ, pleading, petition, affidavit, evidence, account, statement, or other proceeding, which is improper, unnecessary or contains unnecessary matter, or is of unnecessary length. Affidavits and evidence may be disallowed, although the same may be entered as read in any judgment or order.

**671.** When anything in the course of an action or reference which ought to have been admitted, has not been admitted, the party who neglected or refused to make the admission may be ordered to pay the costs occasioned by his neglect or refusal.

**672.**—(1) An affidavit of disbursements shall be made by the solicitor in the cause or matter or some clerk having the management thereof, or by the client, setting forth the sums paid to counsel, the names of witnesses, their places of abode, the places at which they were subpoenaed, and the distance which each such witness was necessarily obliged to travel in order to attend the trial, and the sums paid to them, and shall state that all such witnesses were necessary and material for the client in the cause, or matter, that they did attend, and that they did not attend as witnesses in any other cause (or otherwise, as the case may be) and the number of days which each witness was necessarily absent from home in order to attend such trial.

(2) If a solicitor attends as a witness it shall be stated whether or not he attended at the place of trial as solicitor or witness in any other cause, and whether or not he had any other business there. The day on which the trial took place shall be stated.

(3) The necessity for maps and plans used at the trial, the sum paid for them, and that they were prepared or procured with a view to the trial of the cause, shall be shown by the affidavit of disbursements.

**673.** In cases not otherwise provided for, the Taxing Officer may allow a reasonable sum for the expense of a shorthand writer, on the certificate of the Judge before whom the examination of any witness or witnesses in any such cause, matter or other proceeding takes place; and also on the certificate of a Local Master in references before him when the parties agree to the employment of a shorthand writer.

**674.** Costs may be taxed on an award, although the time for appealing from or moving against the award has not elapsed.

**675.** The costs of removing a bond or other security from the files of the Court for the purpose of bringing an action thereon, may be taxed as costs in the cause in the action brought thereon.

**676.**—(1) Costs shall be allowed and taxed according to Tariff A appended to these Rules, and no other fees, costs or charges than are therein set forth shall be allowed in respect of the matters thereby provided for.

(2) The fees and disbursements payable upon proceedings in the Supreme Court and in the County Courts shall be those enumerated in the Tariff B appended to these Rules.

(3) The fees and allowances to be taken and received by Sheriffs other than those provided for by any statute shall be the fees and allowances set forth in the Tariff C appended to these Rules.

(4) When the costs incurred in Canada of an appeal to His Majesty in his Privy Council have been awarded and the same have not been taxed by the Registrar of the Privy Council the same may be taxed by the Taxing Officer, at Toronto, and the taxation shall be according to the scale of Tariff D.

(5) Costs payable out of the proceeds of land sold, mortgaged or leased under *The Devolution of Estates Act* shall be allowed and taxed according to Tariff E to these rules.

**677.** Costs payable out of the proceeds of lands sold under *The Devolution of Estates Act*, with the approval of the Official Guardian, shall be taxed by the Taxing Officer at Toronto.

**678.**—(1) All bills of costs or disbursements,—

(a) in proceedings for administration or partition;

(b) in actions in which an infant or lunatic is interested;

(c) where costs are payable out of an estate or out of a fund in Court;

shall be revised by the Taxing Officer at Toronto before the amount thereof is inserted in any certificate, report, order or judgment.

(2) In case of urgency leave may be granted to issue a writ of execution, subject to the future revision by the Taxing Officer, and if the amount taxed is reduced on revision, the party entitled to the costs shall forthwith give credit upon the execution for the amount struck off.

**679.** The local officer shall forthwith, after taxing any such bill of costs, transmit the same by mail to the Taxing Officer, and shall allow in the bill the postage for the transmission and return of the bill and shall prepay the same; and shall allow in the bill the sum of one dollar as a fee for the revision of the bill; and a law stamp for that sum, with postage stamps for return postage, shall be paid at the time of taxation by the party procuring the bill to be taxed, and be transmitted therewith.

**680.** The Taxing Officer at Toronto, upon receiving the bill of costs shall revise the taxation either *ex parte*, or upon notice to the Toronto agent of the solicitor whose bill is in question, as he may see fit, giving notice in all cases where the taxation is not clearly erroneous, or where the amount in question is large. Notice may be by appointment mailed to the address of the solicitor or of his agent. The Taxing Officer shall re-transmit the bill when revised to the local officer.

**681.**—(1) When upon the taxation of costs a party is dissatisfied with the allowance or disallowance by the Taxing Officer of the whole or any part of any item he may at any time before the certificate is signed, deliver to the other party interested therein, and to the Taxing Officer, objections in writing to such allowance or disallowance, specifying concisely the item objected to, and may thereupon apply to the Taxing Officer to review the taxation in respect of the same.

(2) The Taxing Officer shall, upon request, hold the taxation open for a reasonable time in order to allow such objections to be delivered.

**682.** The Taxing Officer shall then reconsider and review his taxation upon such objections, and he may receive further evidence in respect thereof, and, if required, he shall state either in his certificate of taxation or by reference to such objections, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

**683.**—(1) A Sheriff claiming any fees, poundage, expenses or remuneration, which have not been taxed, shall, upon being required by either party, and on payment of 25 cents for a copy of his bill in detail (which he shall be bound to render) have his fees, poundage, expenses or remuneration, as the case may be, taxed by the proper Taxing Officer of his county.

(2) A Sheriff shall not, without taxation, collect any fees, costs, poundage or expenses, after he has been required to have the same taxed.

**684.** The Sheriff or the party requiring taxation may obtain an appointment for taxation, and the Taxing Officer, upon proof of service of such appointment or upon the parties attending before him, shall examine the bill, and satisfy himself that the items charged in such bill are correct and legal, and strike out items charged for unnecessary services, and give, when requested, a certificate of the taxation.

**685.** A party dissatisfied with the taxation may appeal therefrom as in ordinary cases of taxation between party and party.

**686.**—(1) Where part only is made by the Sheriff on or by force of an execution against goods and chattels, the Sheriff shall be entitled, besides his fees and expenses of execution, to poundage only upon the amount so made by him, whatever be the sum indorsed upon the writ; and where the personal estate, except chattels real, of the judgment debtor is seized or advertised on or under an execution, but not sold by reason of satisfaction having been otherwise obtained, or from some other cause, and no money is actually made by the Sheriff on or by force of such execution, the Sheriff shall be entitled to the fees and expenses of execution and poundage only on the value of the property seized not exceeding the amount indorsed on the writ, or such less sum as the Court may deem reasonable.

(2) Where land or chattels real of the judgment debtor have been advertised under an execution, but not sold by reason of payment or satisfaction having been otherwise obtained on, or within one month before, the day on which the property has been advertised to be sold, or any day to which the sale may be adjourned, the Sheriff shall be entitled to the fees and expenses of the execution, and the poundage only on the value of the debtor's interest in the property not exceeding the amount indorsed on the writ, or such less sum as the Court may deem reasonable.

**687.** Where there are writs of execution upon the same judgment to several counties or districts and the personal estate of the judgment debtor has been seized or advertised, in

one or in one or more or all of such counties, but not sold, by reason of satisfaction having been obtained under and by virtue of a writ in any of the counties, and no money has been actually made on the execution, the Sheriff shall not be entitled to poundage, but to mileage and fees only for the services actually rendered and performed by him, and the Taxing Officer may allow him a reasonable charge for such services, in case no special fee therefor is assigned in any tariff of costs.

**688.** Where a person liable on an execution is dissatisfied with the amount of poundage fees or expenses of execution claimed by a Sheriff, the Court may, before or after payment thereof, upon the application of such person, upon notice to the Sheriff, if the amount appears to be unreasonable, notwithstanding that it is according to the tariff, reduce the same or order the same to be refunded upon such terms as may seem just.

**689.**—(1) Where a solicitor has been employed to prosecute or defend any cause or matter, the Court may, upon a summary application, declare such solicitor, or his personal representatives to be entitled to a charge upon the property recovered or preserved through the instrumentality of such solicitor, for his costs, charges and expenses of or in reference to such cause, matter or proceeding; and all conveyances and acts done to defeat, or which may operate to defeat, such charge or right shall, unless made to a *bona fide* purchaser for value without notice, be absolutely void and of no effect as against such charge.

(2) The Court may make an order for taxation of such costs, charges and expenses and for the raising and payment of the same out of the property.

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## CHAPTER XXVI

### DEVOLUTION OF ESTATES

**690.** Before an executor or administrator takes proceedings under *The Devolution of Estates Act*, for the sale of real estate in which an infant is concerned, he shall give to the Official Guardian or Local Guardian appointed under that Act notice of the intention to sell, and shall not be entitled to any expenses incurred before giving such notice.

**691.** The Official Guardian or other officer aforesaid, or any person interested in the land or in the proceeds of the sale thereof, may apply to a Judge, upon notice to all parties concerned or to such parties as the Judge may direct, for such direction or order touching the real estate and the proceeds thereof or the costs of the proceedings as to the Judge may seem meet.

## CHAPTER XXVII

### QUIETING TITLES

**692.** A petition for an investigation of titles, under *The Quieting Titles Act*, shall not include two or more properties dependent on separate and distinct titles, but may include any number of lots or parcels belonging to the same person, and dependent on one and the same chain of title.

**693.** Where an application is made under section 2 of the said Act, the proper officer in the Central Office shall attend one of the Judges with the petition, for directions, before the same is referred for investigation.

**694.** All petitions under the said Act shall be filed in the Central Office, and may, at the option of the petitioner, be referred to the Referee in Toronto or to any Local Master.

**695.** The Master shall be the sole Inspector of Titles, in respect of petitions filed under *The Quieting Titles Act*, and the sole Referee in Toronto, but he may assign to any Assistant Master such duties as inspector or referee as he may from time to time deem advisable.

**696.** Petitions to be referred to any Local Referee shall be indorsed thus: "To be referred to the Referee at . . . . . and to Mr. . . . . . , Inspector of Titles."

**697.** Petitions filed unindorsed shall, without order, stand referred to the Referee in Toronto, but a petition indorsed with the name of any Local Referee shall stand referred to him.

**698.** Petitions to be referred to a Local Referee shall be entered with the Inspector of Titles before being filed.

**699.** A Local Referee shall be entitled to confer or correspond from time to time with the Inspector of Titles, for advice and assistance on questions of practice or evidence, or other questions arising under the Act or under these Rules.

**700.** Upon the filing of the petition it shall be delivered or mailed by the proper officer to the Referee.

**701.** The particulars necessary, under the Act, to support the petition shall be delivered or sent by the petitioner, or his solicitor, to the Referee, and shall be forthwith examined and considered by him.

**702.**—(1) In every case of an investigation of title to property under the Act, the petitioner shall deliver to the Referee a plan and description of the property, verified by the affidavit of a qualified land surveyor who has personally inspected the property; and the affidavit shall state the manner in which the land described is indicated upon the plan; the names of the person or persons in actual occupation of the whole or any part thereof; the nature of the buildings upon the property; and any evidence of continued possession which might be of assistance in considering the petition.

(2) The petitioner shall also show, by affidavit or otherwise, whether possession has always accompanied the title under which he claims the property, or how otherwise, or shall show some sufficient reason for dispensing with such proof either wholly or in part.

**703.** Where there is no contest, the attendance of the petitioner, or of any solicitor on his behalf, shall not be required on the examination of the title, except where, for any special reason, the Referee directs such attendance.

**704.** If, on such examination as aforesaid, the Referee finds the proof of title defective, he shall deliver or mail to the petitioner, or his solicitor, a memorandum of such finding, stating shortly therein what the defects are, and he shall therein state as far as possible all the objections to the title.

**705.** When the Referee finds that a good title is shown he shall prepare the necessary advertisement, and, unless the publication thereof is dispensed with under the provisions of the Act, the same shall be published in the *Ontario Gazette* and in any other newspaper or newspapers in which the Referee thinks it proper to have the same inserted; and unless otherwise directed by the Referee a copy of the advertisement shall also be put up on the door of the Court House of the county where the land lies, and, unless the nearest post office is in a city, in some conspicuous place in the post office which is situate nearest to the property, the title of which is under investigation; and the Referee shall indorse on the advertisement so prepared by him the name of the newspaper or newspapers in which the same is to be published, and the number of insertions to be given therein respectively, and the period (not less than four weeks) for which the notice is to be continued at the Court House and post office respectively.

**706.** Any notice of the application to be served or mailed under section 13 of the Act, shall be prepared by the Referee; and directions shall in like manner be given by him as to the persons to be served with the notice, and as to the mode of serving the same.

**707.** The Inspector, or Toronto Referee, shall from time to time confer with one of the Judges in respect of matters before such Inspector or Toronto Referee, as there may be occasion.

**708.** When any person has shown himself, in the opinion of a Local Referee, to be entitled to a certificate or conveyance under the Act, and has published and given all the notices required, the Referee shall write at the foot of the petition, and sign, a memorandum to the following effect: "I am of opinion that the petitioner is entitled to a certificate of title (or conveyance) as prayed (*or* subject to the following incumbrances, etc., *as the case may be*); and shall transmit the petition (charges prepaid) with the deeds, evidence, and other papers before him in reference thereto, to the Inspector of Titles, who shall examine the same carefully, and if he finds any defect in the evidence of title, or in the proceedings, he shall, by correspondence or otherwise, point the same out to the petitioner, or his solicitor, or to the Referee, as the case may be, in order that the defect may be remedied before a Judge is attended with the petition and papers for approval.

**709.**—(1) Where the Inspector, or Referee at Toronto, finds that the petitioner has shown himself entitled to a certificate of title, or a conveyance under the Act, and has published and given all the notices required, he shall write at the foot of the petition, and sign, a memorandum to the same effect as is required from a Local Referee, and shall prepare the certificate of title, or conveyance, and shall engross the same in triplicate on heavy paper of good quality; and shall sign the same respectively at the foot or in the margin thereof; and shall attend one of the Judges therewith, and with the deeds, evidence and other papers before him in reference thereto; and, on the certificate or conveyance being signed by the Judge, the Inspector or other Referee aforesaid, as the case may be, shall deliver or transmit the same to the Registrar to be sealed and registered, and the Registrar shall retain one of the signed certificates or conveyances and shall deliver or transmit the other two, when so sealed and registered, to the petitioner, his solicitor or agent.

(2) Unless the Judge otherwise directs, the certificate shall be dated as of the date of the filing of the petition.

**710.** When a certificate of title has been granted, the Inspector or Referee may, without further order, deliver, on demand, to the party entitled thereto, or his solicitor, all deeds and other evidences of title, not including affidavits made and evidence given in the matter of the title; and shall take his receipt therefor.

**711.** The Inspector and Referee shall keep a book and preserve therein a copy of all his letters under these Rules.

**712.** The applicant shall pay, or prepay, as the case may be, all postages and other expenses of transmitting letters or papers.

**713.** Petitions under section 30 of the Act shall be filed and proceeded with in the same manner (as nearly as may be) as petitions for an indefeasible title.

**714.** The certificate of the Inspector or of a Referee upon any contest before him shall be filed and an appeal shall lie from such certificate in the same way as from a Master's Report.

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## CHAPTER XXVIII

### ACCOUNTANT'S OFFICE

**715.** All such books and records shall be kept as may be directed by the Finance Committee, and the forms used for directions and cheques shall be subject to the approval of that Committee.

**716.** In the month of January in each year the Accountant shall present to the Finance Committee a statement of the amounts paid for salaries and expenses of the Accountant's office during the previous year, and the names of the persons to whom such amounts were paid, and also an estimate of the salaries and expenses of his office for the current year; and such estimates shall be examined by the Finance Committee, who shall be at liberty to make such variations therein as may be deemed proper, and when approved a fiat shall be indorsed thereon or appended thereto which shall authorize the payment of the sums mentioned and cheques may issue accordingly.

**717.** An auditor shall be appointed whose duty it shall be to see that books and records are kept as required by the Finance Committee and to examine and verify the accounts, books and securities in the Accountant's office and to com-

pare the balances with the Bank Account, and to make such further and other examination of the said books and securities as he may think necessary for the proper audit thereof, and to report forthwith, after making such examination, the result thereof to the said Committee, and from time to time to make such suggestions as may appear to be desirable for the efficient keeping of the accounts.

**718.** The Auditor's remuneration shall be fixed by the Lieutenant-Governor in Council and shall be payable in monthly instalments, as part of the expenses of the Accountant's office.

**719.**—(1) It shall be the duty of the Official Guardian to see that moneys payable on mortgages held by the Accountant, in which persons for whom the Guardian has acted are interested, are promptly paid, and that the mortgaged premises are kept properly insured, and that the taxes thereon are duly paid.

**720.**—(1) All mortgages and other securities taken under an order or judgment of the Court, and all bonds and other instruments required by the practice of the Court for the purpose of security, save security for costs, shall, unless otherwise ordered, be taken in the name of the Accountant, and shall be deposited in his office.

(2) Mortgages and other securities made to or vested in the Accountant, in any action or matter, are to be held by him subject to the order of the Court; but no duty or liability save as custodian of the instrument shall by reason of such mortgage or other security being made, given to or vested in him, be imposed on the Accountant in respect of such mortgage or security or any property thereby vested in him.

**721.**—(1) Any person entitled to the discharge of a mortgage made to or vested in the Accountant may leave with the Accountant the required discharge with a request that the same be executed.

(2) The Accountant shall thereupon certify as to the payment of the money secured by the mortgage, and the matter shall in such case be considered by the officers whose duty it is to sign and countersign cheques for payment of money out of Court, and if they find that the mortgage has been satisfied in full and that the proposed discharge is in due form they shall indorse upon such certificate and discharge a direction for the execution of the said discharge by the Accountant.

(3) Thereupon the Accountant may execute such discharge and may on a receipt being given therefor, deliver up all deeds and documents relating to such mortgage in his hands and may assign any policy of insurance held by him as collateral security for such mortgage to the person entitled to such discharge or as he may by writing direct.

**722.**—(1) Interest shall not be credited in any action or matter in respect of money paid into Court,—

- (a) With a defence;
- (b) As security for costs of an action or appeal;
- (c) As security for debt or costs, to stay execution;
- (d) As a deposit for sale in mortgage actions;
- (e) As a condition imposed by any injunction order;
- (f) As proceeds of sale in, or to abide the result of, interpleader proceedings; or
- (g) For any other merely temporary purpose;

unless or until after the same shall have been in Court for six months and then only at the rate of 2 per cent. per annum not compounded in any case; but the Finance Committee may for special reasons order that in any particular case interest shall be allowed on such moneys at any higher rate not exceeding 3 per cent. per annum.

(2) Interest shall be credited upon the Assurance fund at the rate of  $2\frac{1}{2}$  per cent. per annum.

(3) Interest shall be credited to suitors' accounts other than as above provided at the rate of 5 per cent. per annum until otherwise ordered by the Finance Committee; but the Finance Committee may in its discretion, from time to time, direct that interest at a lesser rate but not less than 4 per cent. per annum, until otherwise ordered by the Finance Committee, shall be credited upon any account when the amount of such account to its credit in Court exceeds \$50,000.

(4) Interest shall be credited upon money paid into Court only after the same has been in Court for fifteen days.

(5) Compound interest shall not be credited to any action or matter or allowed or paid to any suitor in respect of any fund which has not been in Court for at least five years.

**723.**—(1) All sums less than \$10 standing to the credit of an adult and unclaimed for two years, shall be transferred to the Suspense account.

(2) All sums which are not claimed within ten years from the time when the same became payable out of Court, shall be transferred to the Suspense account.

(3) Money transferred to the Suspense account shall cease to bear interest, but shall at any time be paid to the person entitled.

**724.** Where money or securities in Court are to be paid out of Court or transferred to the legal personal representative of any person, the same may, upon proof to the satisfaction of the Accountant of the death of any of them whether before, on, or after the day of the date of the order, be paid to the survivors or survivor of them.

**725.** Where money or securities in Court are to be paid out or transferred to any person named in the order or judgment, or named or to be named in any report, the same or any portion thereof for the time being remaining unpaid or untransferred, may, on proof to the satisfaction of the Accountant of the death of such person whether before, on, or after the date of the order or judgment and that his legal personal representatives are entitled thereto, be paid or transferred to such legal personal representatives or the survivors or survivor of them.

**726.** Any person claiming to be interested in, or to have a lien or charge upon, or an assignment of, any money or securities in Court, or invested in the name of the Accountant, or any portion thereof, or claiming to have the same applied towards the satisfaction of any judgment or execution against the person to whose credit such moneys or securities stand, or for whose benefit the same are held by the said Accountant may, upon an affidavit verifying his claim, apply *ex parte* for an order directing that such money or securities shall not be paid out or dealt with except upon notice to him. (Form No. 67).

**727.** Money to be paid into Court shall be paid into the Canadian Bank of Commerce at Toronto, or in some branch of it or into a chartered Bank being its agent in Ontario, and in no other way.

**728.**—(1) The person paying money into Court shall obtain a direction to the Bank to receive the money.

(2) The person applying for a direction or cheque shall leave a *praecipe* therefor, and the judgment or order under which the money is payable, together with a copy thereof and of the report where necessary, which is to be on good paper of foolscap size, folded lengthwise, and is to be verified by an officer in the Accountant's office, and to be retained by the Accountant.

(3) If the direction is obtained elsewhere than in Toronto, these papers, with the necessary postage for their retransmission, shall be sent to the Accountant forthwith.

(4) The copy so verified shall be marked with a number corresponding with that of the account, and shall be bound and kept for reference in a book to be called the "Order Book."

(5) When money is required to be paid into Court to the credit of the Assurance Fund established under *The Land Titles Act*, the direction to receive the money, if the same is payable into a Bank in Toronto, shall be obtained from the Master of Titles, and if payable into a Bank outside of Toronto the direction shall be obtained from the proper Local Master of Titles.

**729.** The person paying money into Court shall be entitled to credit therefor as of the date on which the same was deposited in the Bank.

**730.** The Bank, on receiving the money, shall give a receipt therefor in duplicate; and one copy shall be delivered to the party making the deposit, and the other shall be posted or delivered the same day to the Accountant.

**731.**—(1) Money shall be paid out of Court upon the cheque of the Accountant, countersigned by an officer of the Court or other person designated by the Finance Committee, and every cheque shall first be initialed by the Assistant Accountant or Chief Clerk.

(2) The person entitled to a cheque shall produce and leave with the Accountant a *praecipe* therefor, together with the orders and reports entitling such person to the money.

**732.**—(1) Where an order for payment of money out of Court is made otherwise than by a Judge of the Supreme Court, the Accountant before acting thereon shall apply to a Judge for his approval.

(2) An order dispensing with the payment of money into Court unless it is made by a Judge of the Supreme Court shall not be acted on unless or until a Judge approves thereof.

(3) An order dispensing with payment of money into Court, or a certified copy thereof, shall be left with the Accountant forthwith after entry thereof.

**733.**—(1) The Official Guardian shall deposit in the Accountant's Office a statement showing the distribution of the proceeds of lands sold or mortgaged with his approval under *The Devolution of Estates Act*, and the dates of births of the infants interested.

(2) All money received by the Official Guardian on behalf of infants, lunatics, absentees, or other persons for whom he acts, shall, without order, be paid into Court to the credit of the person entitled.

(3) Money paid into Court under this rule to the credit of infants, shall be paid out to them when they attain their majority.

(4) Money paid into Court to the credit of non-concurring heirs and devisees shall be paid out to them upon application to the Accountant, without order.

(5) Money paid into Court to the credit of an absentee shall be paid out to him upon the fiat of a Judge, to be obtained upon proof of identity after notice to the Official Guardian.

**734.** When costs are directed to be paid out of money in Court, the Solicitor of the party entitled to receive the same shall be entitled to have the cheque drawn in his favour upon filing with the Accountant an affidavit stating:

(a) That he is entitled to receive such costs, and

(b) That he has not been paid his costs or any part thereof, and that the costs, payment of which is sought, are justly due to him.

If the solicitor has been changed in the course of the litigation, that fact shall be shown in the affidavit, and the consent of both solicitors shall be filed.

**735.**—(1) When money to which an infant or lunatic is entitled is paid into a Surrogate or County Court, the Registrar or Clerk of that Court shall forthwith cause the same to be transmitted to the Accountant with a statement showing when the money was so paid in, and a copy (certified by the Registrar or Clerk) of all judgments or orders affecting the same, and the money shall thereupon be placed to the credit of the said infant or lunatic.

(2) All money paid into a Surrogate or County Court and unclaimed for two years shall be transmitted by the Registrar or Clerk to the Accountant, together with a statement showing when the money was paid in and a certified copy of all judgments or orders affecting the same.

(3) Such money shall be paid out to any person found entitled thereto upon the production of a judgment or order of the Surrogate or County Court Judge, and shall in the meantime be dealt with as other money in the Supreme Court.

**736.** When money is in Court to the credit of an infant it shall be paid out of Court to him with accrued interest without further order upon his attaining his majority, unless otherwise ordered.

**737.**—(1) When money is in Court to the credit of an infant or lunatic it may be paid out upon the fiat of a Judge in Chambers without formal order.

(2) Such fiat shall be prepared by the Official Guardian and may be signed either by the Judge or the Clerk in Chambers, and shall be entered at length in the order book of the Clerk in Chambers, and the fiat or a copy to be verified by the Accountant shall be deposited with the Accountant, and no law stamp shall be required upon such fiat.

(3) The Judge may in his discretion fix and direct payment of the costs of the application to the solicitor and dispense with the affidavit required by Rule 734.

(4) When an order has been made for payment of maintenance out of money in Court to which an infant is entitled the cheque shall, upon application to the Official Guardian, be obtained and forwarded by him without expense to the applicant, and no law stamp shall be required upon any such cheque.

## CHAPTER XXIX

### PETITIONS OF RIGHT

**738.** A petition of right shall be according to Form No. 124, and shall be signed by the suppliant, his counsel or solicitor.

**739.** The petition shall be left with the Provincial Secretary, in order that the same may be submitted to the Lieutenant-Governor for his consideration, and in order that the Lieutenant-Governor, if he thinks fit, may grant his fiat that right be done; and no fee or sum of money shall be payable by the suppliant therefor.

**740.** Where a fiat is granted a copy of the petition and fiat shall be left at the office of the Attorney-General, with an indorsement thereon, praying for an answer on behalf of His Majesty within 28 days.

**741.** Where the petition is presented for the recovery of real or personal property, or any right in or to the same, which has been granted or disposed of by or on behalf of His Majesty or his predecessors, a copy of the petition and fiat shall be served upon or left at the last or usual or last-known place of abode of the person in the possession, occupation or enjoyment of the property or right, indorsed with a notice according to Form No. 125.

**742.** The person so served shall appear and file his defence to the petition, as required by such notice.

**743.** The petition may be answered by statement of defence by or in the name of His Majesty's Attorney-General, on behalf of His Majesty, and by any other person who may be called upon as aforesaid, in the same manner as in an action.

**744.** When no other provision is made and so far as the same are applicable, these Rules shall apply to petitions of right.

**745.** In case of a failure on the behalf of His Majesty, or of any other person duly called upon, to defend in due time, at any stage of the proceedings, the suppliant may apply to the Court for an order that the petition may be taken as confessed; and the Court may order that such petition may be taken as confessed, as against His Majesty or other party so making default, and judgment may be given by the Court in favour of the suppliant.

**746.** A petition of right shall be tried by a Judge without a jury.

**747.** The judgment of the Court shall be that the suppliant is or is not entitled either to the whole or to some portion of the relief sought by his petition, or that such other relief may be given, and upon such terms and conditions (if any) as to the Court seem just.

**748.** The costs of a petition of right shall be in the discretion of the Court or a Judge, and shall be recovered in the same way as in ordinary actions, save when costs are ordered to be paid by His Majesty.

**749.** Upon any judgment or order for the payment of costs or damages by His Majesty, the Judge may, upon application in behalf of the party entitled after the lapse of 14 days from the making, giving or affirming of the judgment or order, certify to the Provincial Treasurer according to Form No. 126.

**750.** Nothing in these Rules shall prevent a subject from proceeding by petition of right in any manner in which he might have proceeded before the 23rd day of April, 1887; nor shall anything in these Rules be construed as entitling a subject to proceed by petition of right in any case in which he would not be entitled so to proceed under the Acts passed by the Parliament of the United Kingdom before the said date.

## CHAPTER XXX

### OFFICERS AND OFFICES

**751.** The Registrar or such other officer as he may direct shall attend the Weekly Sittings at Toronto, and the officer so attending shall settle and sign all orders and settle all orders and judgments pronounced thereat.

**752.**—(1) Local Registrars shall, with respect to all matters in their offices, perform the same duties in the same manner as the like duties are performed in Central and Registrars' Offices at Toronto.

(2) When there is a Deputy Clerk of the Crown or Deputy Registrar he shall have the like powers and duties with reference to all matters in his office.

**753.** Every Local Registrar, Local Master, Deputy Registrar and Deputy Clerk of the Crown, shall be a Local Taxing Officer.

**754.** Every Local Taxing Officer shall, subject to the provisions of Rules 677 to 679 in actions begun or pending in his office be entitled to tax all bills of costs, including counsel fees, subject only to appeal to a Judge. This Rule shall not apply to cases in which infants are concerned, unless the Official Guardian is the guardian *ad litem* for the infants.

**755.** All Taxing Officers shall, for the purpose of any taxation, have power to administer oaths and take evidence, direct production of books and documents, make certificates, and give general directions for the conduct of taxations before them.

*Business in Offices*

**756.** Except as provided in respect to Quieting Titles matters, no business shall be transacted in any of the offices of the Courts, either in procuring or issuing process, or in entering judgments or taking any proceeding whatever in a cause, unless upon the personal attendance of the party on whose behalf such business is required to be transacted, or of the counsel or solicitor of such party or the clerk or agent of the solicitor, or the clerk of the agent.

**757.** All officers shall be auxiliary to one another for promoting the correct, convenient, and speedy administration of business.

**758.** In case of the absence or illness of any officer to whom any special duty is assigned or of the office being vacant, the duty may be performed by such other officer as may be designated for that purpose by the Chief Justice of Ontario.

**759.** Where the first document in a cause or matter is required to be filed in Toronto, the Central Office shall be deemed to be the office in which the cause or matter is commenced and in other cases the office of the Deputy Clerk of the Crown, Deputy or Local Registrar of the County or District in which such first document is required to be filed shall be deemed to be the office in which the cause or matter is commenced.

**760.** All proceedings in a cause or matter shall be carried on in the office in which the cause or matter is commenced.

**761.** All persons called to the Bar of Ontario or admitted as solicitors of the Supreme Court of Judicature for Ontario, shall sign the rolls provided upon taking the prescribed oaths.

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## CHAPTER XXXI

### COUNTY AND LOCAL COURTS

**762.** All writs in the County Courts shall be issued by the Clerk and shall be under the seal of the Court, and shall be tested in the name of the Judge thereof; or in the case of the death of such Judge, then in the name of the Junior or acting Judge for the time being.

**763.** The Judges of the County Courts shall have power to sit and act at any time for the transaction of any part of the business of such Courts, or for the discharge of any duty including the trial of non-jury actions.

**764.** Where the plaintiff fails to recover judgment in an action or other proceeding brought in a County or Division Court by reason of such Court having no jurisdiction over the subject matter thereof, the County Court, or the Judge presiding in the Division Court, as the case may be, shall have jurisdiction over the costs of such action or proceeding, and may order by and to whom the same shall be paid.

**765.** In all actions brought in a County Court the Judge of the County Court where the proceedings were commenced, or the Master (subject to appeal in either case as if the case were in the High Court) may change the place of trial, and in the event of an order being obtained for that purpose, the Clerk of the County Court in which the action was commenced shall forthwith transmit all papers in the action to the Clerk of the County Court to which the place of trial is changed, and all subsequent proceedings shall be entitled in such last-mentioned Court, and carried on in such last-mentioned County as if the proceedings had originally been commenced in such last-mentioned Court.

**766.** These Rules, and the practice and procedure in actions in the Supreme Court shall, so far as the same can be applied, apply and extend to actions in the County Court.

**767.** In actions in the County Court the Clerk shall, subject to the directions of the Judge, discharge all the duties and have all the powers of the Registrar of the Supreme Court and shall act as Referee in the taking of any accounts that may be referred to him by the Judge.

**768.—(1)** Money to be paid into a County Court or Surrogate Court shall be paid into some incorporated bank designated for that purpose, from time to time, by order of the Lieutenant-Governor in Council; or where there is no such bank, then into some incorporated bank in which public money of the Province is then being deposited, and which has been appointed for that purpose by any General Rule in that behalf; or if no bank has been appointed, into any bank in which public money of the Province is being deposited.

**(2)** The money shall be paid in to the credit of the cause or matter in which the payment is made, with the privity of the Clerk or Registrar (as the case may be) of the Court, and in no other manner; and such money shall be withdrawn only on the order of the Court or a Judge thereof, with the privity of the Clerk or Registrar of the Court.

(3) Where money is paid in under a plea of payment into Court, the Clerk, on the production of the receipt of the bank for the money or other satisfactory proof of such payment, shall sign a receipt for the amount in the margin of the pleading.

**769.** The Clerk of a County Court and the Registrar of a Surrogate Court shall each keep a book containing an account of all money so paid into their respective Courts, and of the withdrawal thereof; and shall prepare in the month of January in every year a statement of all money so paid in and withdrawn, and a statement of the condition of the various accounts upon the thirty-first day of the preceding December, and shall transmit to the Provincial Secretary and to the Judge or each of the Judges of such Courts, a copy of such statement, with a declaration thereto annexed. (Form No. 132).

**770.** The book so to be kept shall be open for inspection during office hours; and the Clerk or Registrar shall give a certificate of the state of an account or an extract therefrom at the request of any party interested or his solicitor on his paying to the Clerk or Registrar the sum of twenty cents for such inspection or certificate and the sum of ten cents per folio for such extract.

**771.** The Official Guardian shall be entitled to make any search and take any extracts without payment of any fee.

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## CHAPTER XXXII

### FORMS

**772.**—(1) The forms contained in the Appendix hereto shall be used with such variations or modifications as circumstances may require; but any variance therefrom, not being in matter of substance, shall not affect their regularity.

(2) The provisions contained in the form prescribed shall be deemed to be authorized by these Rules.

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## SCHEDULE

### OF RULES AND ORDERS NOT REPEALED

(i) Rules respecting the Trial of Election Petitions (Ontario). 23 December, 1903.

(ii) Rules for the Trial of Controverted Elections. 14 December, 1908. (17 O.L.R., Ap. II.)

## APPENDIX OF FORMS

GENERAL PROVISIONS APPLICABLE TO ALL WRITS AND  
SIMILAR DOCUMENTS ISSUED BY THE COURT

All writs shall be in the Court and cause. See Rule 190.

There shall be at the foot or in the margin of all writs a memorandum:

"Issued from the Central Office, Osgoode Hall, Toronto (or from the Office of the Local Registrar at \_\_\_\_\_ in the County of \_\_\_\_\_ as the case may be)," signed by the officer issuing the writ. (See Rule 6.)

There shall be indorsed upon every writ a statement of the plaintiff's residence and the name of the solicitor issuing the writ and his address in the form following:

This writ was issued by *E. F.*, of \_\_\_\_\_ solicitor for the said plaintiff who resides at \_\_\_\_\_ [or, this writ was issued by the plaintiff in person] who resides at \_\_\_\_\_ [mention the city, town or township, and also the name of the street and number of the house of the plaintiff's residence, if any, or in case of a township the number of the lot and concession]. (See Rules 11 and 12.)

## WRITS OF SUMMONS, AND NOTICE IN LIEU THEREOF

No. 1.

*General Form of Writ of Summons. (Not specially indorsed.)*  
(Rules 4 and 7)

In the Supreme Court of Ontario.

Between *A.B.*, Plaintiff,  
and  
*C.D.* and *E.F.*, Defendants.

*Name and title of Sovereign, e.g., George the fifth, by the Grace of God, of Great Britain, Ireland, and the British Dominions Beyond the Seas, King, Defender of the Faith, Emperor of India.*

To *C.D.* of \_\_\_\_\_ in the County of \_\_\_\_\_ and *E.F.* of \_\_\_\_\_ in the County of \_\_\_\_\_

We command you, that within ten days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in this action; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence on the plaintiff's own showing and you may be deemed to have admitted the plaintiff's claim and (subject to Rules of Court) will not be entitled to notice of any further proceedings herein.

Witness, the Honourable \_\_\_\_\_ Chief Justice of Ontario,  
this \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord, 19\_\_\_\_

(Signature of Officer.)  
(Registrar.)

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within 12 calendar months from the date thereof, or if renewed, within 12 calendar months from the date of such renewal, including the day of such date, and not afterwards.

Appearance may be entered at the \_\_\_\_\_ office at \_\_\_\_\_

*Indorsements to be made on the writ.*

The plaintiff's claim is for, &c. (as in Form No. 4 or as may be).

*Indorsement to be made on the writ within three days after service thereof.*

This writ was served by on C.D. [the defendant or one of the defendants], on the day of 19

This memorandum is made this day of 19

(Signature) *X.Y.*  
Address

No. 2.

*Writ for service out of Ontario. (Not Specially Indorsed.)*  
(Rules 7 and 25)

In the Supreme Court of Ontario.

Between A.B., Plaintiff,  
and  
C.D. and E.F., Defendants.

*Name and title of Sovereign,*

To C.D., of

We command you, C.D., that within [here insert the number of days directed by the order allowing service] after the service, on you, of this writ [or notice of this writ as the case may be], and of the plaintiff's statement of claim delivered herewith, inclusive of the day of such service, you cause an appearance to be entered for you in this action, and your defence thereto, if any, to be delivered within 10 days thereafter; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence on the plaintiff's own showing and you may be deemed to have admitted the plaintiff's claim and (subject to Rules of Court) will not be entitled to notice of any further proceedings herein.

Witness, the Honourable

Chief Justice of Ontario, this  
day of

in the year of Our Lord, 19  
(Signature of Officer)  
Registrar  
(or as the case may be)

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of Ontario. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

Appearance may be entered at the office at

No. 3.

*Notice of writ to be served out of Ontario where the defendant is not a British subject—(Rule 7).*

In the Supreme Court of Ontario.

Between A.B., Plaintiff,  
and  
C.D. and E.F., Defendants.

To G.H., of

Take notice that A.B., of has commenced an action against you, G.H., in His Majesty's Supreme Court of Ontario, by writ of that Court, dated the day of

A.D. 19 ; which writ is indorsed as follows [copy in full the indorsements of Claim],\* [and you are required within days after the receipt of this notice and of the plaintiff's statement of claim, to be served herewith, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action, and your defence thereto, if any, to be delivered within 10 days thereafter;] and in default of your so doing, the said A.B. may proceed therein, and judgment may be given in your absence on the plaintiff's own showing and you may be deemed to have admitted the plaintiff's claim and (subject to Rules of Court) will not be entitled to notice of any further proceedings therein.

Appearance may be entered at the office at

Dated, &c.

X. V., of &c.  
Solicitor for A.B.

N.B.—This notice is to be used when the person to be served is not a British subject, and is not in British dominions.

*Indorsement to be made on the notice of the writ after service thereof:*

This notice was served by me, on G.H. (the defendant or one of the defendants) on the day of 19

This memorandum is made on the day of 19

\*Where the writ is specially indorsed omit the words in brackets and substitute:

"And you are required within days after the service of this notice on you, inclusive of the day of such notice, if you desire to defend the said action, to cause an appearance to be entered for you therein and further within the same time to file an affidavit in the office in which your appearance is to be entered, showing the nature of your defence (if any) to the plaintiff's claim, and forthwith thereafter to serve a copy upon the Plaintiff's Solicitor.

No. 4.

*Indorsements on Writs of Summons (Rules 4 and 32).*

Money Claims (where writ is not specially Indorsed.)

The plaintiff's claim is \$	for the price of goods sold.
The plaintiff's claim is \$	for money lent [and interest].
The plaintiff's claim is \$	whereof \$ is the price of goods sold, and \$ for money lent, and \$ for interest.
The plaintiff's claim is \$	for arrears of rent.
The plaintiff's claim is \$	for arrears of salary as a clerk [or as the case may be.]
The plaintiff's claim is \$	for interest upon money lent.
The plaintiff's claim is \$	for penalties under the Statute R.S.O. Ch.
The plaintiff's claim is \$	for fees for work done [and \$]
The plaintiff's claim is \$	as auctioneer, broker, &c.] for commission as [state character
The plaintiff's claim is \$	for medical attendance.
The plaintiff's claim is \$	for the warehousing of goods.
The plaintiff's claim is \$	for the use and occupation of a house.
The plaintiff's claim is \$	for work done.
The plaintiff's claim is \$	for board and lodging.
The plaintiff's claim is \$	as agent of the plaintiff. for money received by the defendant
The plaintiff's claim is \$	the plaintiff by fraud.
The plaintiff's claim is \$	for a return of money obtained from
paid by the plaintiff as surety.	for a contribution in respect of money

The plaintiff's claim is \$ upon a policy of insurance upon the life of *X.Y.*, deceased.

The plaintiff's claim is \$ upon a bond to secure payment of \$1 000 and interest.

The plaintiff's claim is \$ upon a bill of exchange accepted [*or drawn or indorsed*] by the defendant.

The plaintiff's claim is \$ upon a promissory note made [*or indorsed*] by the defendant.

The plaintiff's claim is \$ against the defendant *A.B.*, as acceptor, and against the defendant *C.D.* as drawer [*or indorser*], of a bill of exchange.

The plaintiff's claim is \$ for calls upon shares.

*Claims for Damages and other Relief.*

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and \$ for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*] of the plaintiff [and \$ for money received as factor, &c.]

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of *X.Y.* to the defendant [*or plaintiff*].

The plaintiff's claim is for damages for non-compliance with the award of *X.Y.*

The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution].

The plaintiff's claim is for damages by reason of the defendant's negligence while acting as solicitor of the plaintiff.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same].

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same].

The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [*or a carriage lent*], [and for wrongfully, &c.].

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c., being, &c.

The plaintiff's claim is for damages for libel. The libel complained of was published [give date and manner of publication].

The plaintiff's claim is for damages for slander. The slander complained of was the speaking of the words [quote them] on the day of

The plaintiff's claim is to recover possession of goods wrongfully distrained, being, &c.

The plaintiff's claim is for damages for improperly distraining.

The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or a business, or shares, or, &c.*].

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of *A.B.*

The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.

The plaintiff's claim is for damages for breaches of covenants contained in the lease of a farm.

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is as executor of *A.B.* deceased, for damages for the death of the said *A.B.*, from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

The plaintiff's claim is for damages for breach of promise of marriage.

The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.

The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for breach of warranty of a horse.

The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

The plaintiff's claim is for dower out of lot number (or describing the property otherwise with reasonable certainty). And take notice that the plaintiff claims damages for the detention of her dower from the day of

The plaintiff's claim is to recover possession of a house No. in street, in the City of Ottawa; or of the N.E.  $\frac{1}{4}$  of lot 2, in the 3rd concession of the township of in the county of . And for mesne profits. And for an account of rents or arrears of rent.

*If an injunction is claimed.*

The plaintiff's claim is for an injunction to restrain the defendant from

*Claims for equitable relief.*

The plaintiff's claim is as creditor of X. Y., of deceased, to have the [real and] personal estate of the said X. Y., administered. The defendant C. D., is sued as the administrator (or executor) of the said X. Y. [and the defendants E. F. and G. H. as his co-heirs-at-law].

The plaintiff's claim is as a legatee under the will, dated the day of 19 of X. Y. deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant C. D. is sued as the executor of the said X. Y. [and the defendants E. F. and G. H. as his devisees].

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership, dated the day of ], and to have the affairs of the partnership wound up.

The plaintiff's claim is to have the trusts of an indenture, dated, and made between , carried into execution.

The plaintiff's claim is to have a deed dated and made between [parties], set aside or rectified.

The plaintiff's claim is for specific performance of an agreement dated the day of , for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at

The plaintiff's claim is for alimony; and the plaintiff demands as interim alimony until the trial of the action the monthly (or weekly) sum of \$ to be paid to her on the day of each month (or week) at and the interim costs to which she is entitled by the practice in that behalf.

NOTE.—Where the plaintiff desires to register a certificate of lis pendens the indorsement on the writ of summons shall contain such short description of the property as may be necessary or proper for that purpose.

*Claims in Mortgage Actions (Rules 33 and 460).*

(a) *By Mortgagee for sale and for immediate payment and possession.*

The plaintiff's claim is on a mortgage, date the day of made between [or by deposit of title deeds], and that the mortgage may be enforced by sale, [where desired add and payment to the plaintiff by the defendant personally of any balance].

*If immediate payment is desired add, And to recover from you the defendant (naming the defendant against whom the relief is claimed) payment of the amount due under a covenant by [you] in that behalf contained in said mortgage (or as the case may be).*

*(If immediate possession is desired add, And to recover immediate possession of the mortgaged premises,*

And take notice that the plaintiff claims that there is now due by you for principal money the sum of \$ [If so add and for taxes (or premiums of insurance or other matters) the sum of \$ ] and for interest the sum of \$ and that you are liable to be charged with these sums with subsequent interest to be computed at the rate of per centum per annum and costs in and by the judgment to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the judgment your interest in the property may be sold, unless before the time allowed you for appearance you file in the office within named a memorandum in writing entitled in this action and signed by yourself or your solicitor to the following effect: "I dispute the amount claimed by the plaintiff in this action," in which case you will be entitled to four days' notice of the taking of the account of the amount due to the plaintiff.

The following is a description of the mortgaged premises: (Set out description sufficient for registration).

*(b) By Mortgagee for foreclosure and for immediate payment and possession.*

The plaintiff's claim is on a mortgage, dated the day of made between [or by deposit of title deeds], and that the mortgage may be enforced by foreclosure.

*If immediate payment is desired add, And to recover from you the defendant (naming the defendant against whom the relief is claimed) payment of the amount due under a covenant by [you] in that behalf contained in said mortgage (or as the case may be).*

*If order for immediate possession is desired add, And take notice further that the plaintiff claims to be entitled to recover immediate possession of the mortgaged premises.*

And take notice that the Plaintiff claims that there is now due by you for principal money the sum of \$ [If so add and for taxes (or premiums of insurance or other matters) the sum of \$ ] and for interest the sum of \$ and that you are liable to be charged with these sums and subsequent interest to be computed at the rate of per centum per annum and costs, in and by the judgment to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the judgment your interest in the property may be foreclosed unless before the time allowed you for appearance you file in the office within named a memorandum in writing entitled in this action and signed by yourself or your solicitor to the following effect:—"I dispute the amount claimed by the plaintiff in this action" in which case you will be entitled to four days' notice of the taking of the account of the amount due to the Plaintiff.

If you desire a sale of the mortgaged premises instead of a foreclosure, and do not intend to defend the action, you must within the time allowed for appearance, file in the office within named, a memorandum in writing entitled in this action and signed by yourself or your solicitor, to the following effect:—"I desire a sale of the mortgaged premises in the plaintiff's writ of summons mentioned, or a competent part thereof, instead of a foreclosure," and you must deposit in the Court to the credit of this action the sum of \$80 to meet the expenses of such sale and attach to the said memorandum a certificate of the Accountant of the Supreme Court to the effect that such deposit of \$80 has been made.

"The following is a description of the mortgaged premises." (Set out description sufficient for registration).

*(c) By Mortgagor for Redemption.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage, dated and made between [parties], and to redeem the property comprised therein.

*Statement of Character of Parties. (To be introduced into the Indorsement of the Claim).*

The plaintiff's claim is as executor [or administrator] of *C.D.* deceased, for

The plaintiff's claim is against the defendant *A.B.*, as executor [or, &c.] of *C.D.*, deceased, for

The plaintiff's claim is against the defendant *A.B.*, as executor of *X.Y.*, deceased, and against the defendant *C.D.*, in his personal capacity, for

The claim of the plaintiff is against the defendant as executrix of *C.D.*, deceased, for

The plaintiff's claim is as assignee in insolvency of *A.B.*, for

The plaintiff's claim is against the defendant as assignee in insolvency of *A.B.*, for

The plaintiff's claim is as [or the plaintiff's claim is against the defendant as] trustee under the will of *A.B.* [or under the settlement upon the marriage of *A.B.* and *X.Y.*, his wife], for

The plaintiff's claim is against the defendant as heir-at-law of *A.B.*, deceased, for

The plaintiff's claim is against the defendant *C.D.*, as heir-at-law, and against the defendant *E.F.*, as devisee of lands under the will of *A.B.*, deceased for

The plaintiff's claim is as well for His Majesty the King as for himself, for

No. 5.

*Specially Indorsed Writ. (Rule 33).*

In the Supreme Court of Ontario.

Between *A.B.*, Plaintiff,

and

*C.D.* and *E.F.*, Defendants.

*Name and title of Sovereign.*

To *C.D.*, of the City of \_\_\_\_\_, in the County of \_\_\_\_\_  
 We command you that within ten days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in this action AND WITHIN THE SAME TIME THAT YOU DO FILE AN AFFIDAVIT IN THE OFFICE IN WHICH YOUR APPEARANCE IS TO BE ENTERED, SHOWING THE NATURE OF YOUR DEFENCE (if any) TO THE PLAINTIFF'S CLAIM, AND THAT YOU DO FORTHWITH THEREAFTER SERVE A COPY OF SUCH AFFIDAVIT UPON THE PLAINTIFF'S SOLICITOR.

And take notice that in default of your so doing, the plaintiff may sign judgment for the relief claimed as indorsed on this writ, and execution will at once issue thereon.

Witness, the Honourable \_\_\_\_\_  
 day of \_\_\_\_\_

Chief Justice of Ontario, this  
 in the year of our Lord, 19\_\_\_\_\_

(Signature of Officer).

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within 12 calendar months from the date thereof, or if renewed, within 12 calendar months from the date of such renewal, including the day of such date, and not afterwards.

Appearance may be entered at the \_\_\_\_\_ office at \_\_\_\_\_

*Indorsement of Claim to be made on the writ.*

The plaintiff's claim is for, &c. (as below).

*Indorsement to be made on the writ within three days after service thereof.*

This writ was served by me on C.D. [the defendant *or* one of defendants], on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

This memorandum is made this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

(Signed) \_\_\_\_\_ X.Y.  
Address.

**NOTE.—When service is intended to be made out of Ontario, change in accordance with Form No. 2.**

*Special indorsement*

*The Claim shall be indorsed in accordance with the forms of indorsement given below, and following the indorsement there shall be this: "Warning to Defendant":*

This writ being specially indorsed, the defendant is warned that, in addition to entering appearance within the time limited, he must within the same time file an affidavit showing the nature of his defence to the plaintiff's claim, and forthwith thereafter serve a copy thereof upon the plaintiff's solicitor, and that in default judgment will be entered and execution issued.

If you pay the amount of the plaintiff's claim within the time limited for appearance further proceedings will be stayed. If you deem the amount claimed for costs excessive you may have them taxed.

1. The plaintiff's claim is for money received by the defendant for the use of the plaintiff. The following are the particulars:

January 2nd, 19____.	—
To amount of rents on No. 5 Smith Street, collected by defendant.....	\$300
To deposit on intended sale of Blythe Cottage.....	400
Amount due.....	\$700

**NOTE.—In all cases of special indorsement the specific claim shall be followed by this clause—"and the plaintiff further claims \$\_\_\_\_ for costs."**

2. The plaintiff's claim is for the price of goods sold. The following are the particulars:—

19. —December 31st—	Balance of account for butcher's meat to this date.....	\$142
19. —January 1st to March 31st—	Butcher's meat supplied.....	297
19. —February 1st—Paid.....		\$439
		180
	Balance due.....	\$259

3. The plaintiff's claim is against the defendant A.B. as principal, and against the defendant C.D. as surety, for the price of goods sold to A.B. The following are the particulars:—

19. —February 2nd—Guarantee by C.D. of the price of woollen goods to be supplied to A.B.	
February 2nd—To goods.....	\$225
March 3rd—To goods.....	151
March 17th—To goods.....	27
April 5th—To goods.....	65
	\$468

4. The plaintiff's claim is against the defendant, as maker of a promissory note. The following are the particulars:—

Promissory note for \$1,000, dated January 1st, 19 , made by defendant in favour of the plaintiff, payable 4 months after date.

Principal.....	\$1,000
Interest.....	142
Notarial charges.....	2
	<u>\$1,144</u>

5. The plaintiff's claim is against the defendant *A.B.* as acceptor, and against the defendant *C.D.* as drawer of a bill of exchange. The following are the particulars:—

Bill of exchange for \$2,000, dated January 1st, 19 , drawn by defendant *C.D.* upon and accepted by defendant *A.B.*, payable 3 months after date.

Principal.....	\$2,000
Interest.....	17
Notarial charges.....	2
	<u>\$2,019</u>

6. The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars:—

Bond, dated January 1st, 19 . Conditioned for payment of \$500 on the 26th December, 19 .

Principal due.....	\$500
Interest.....	30
	<u>\$530</u>

7. The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars:—

Deed, dated covenant to pay \$3,000 and interest.

Principal due.....	\$800
Interest.....	25
	<u>\$825</u>

8. The plaintiff's claim is to recover possession of a farm and premises called lot No. 1 in the 5th Con. of the Twp. of , in the County of , which was let to the defendant by the plaintiff for the term of 3 years from the 29th day of Sept., 19 , which term has expired (or as tenant from year to year from the 29th day of Sept. 19 , which said tenancy was duly determined by notice to quit on the 29th day of Sept., 19 .)

The plaintiff also claims \$ for mesne profits.

9. The plaintiff's claim is to recover possession of (or for the return of [a certain stallion named "Disturbance," or as the case may be], unlawfully detained by the defendant, of which the plaintiff is [the owner and lawfully entitled to the possession].

10. In mortgage actions, use the forms provided *ante* and add the "warning."

NOTE.—All the following forms are to be preceded by the Court and style of cause or title. (See Rule 190).

No. 6.

*Appearance (Rule 46)*

Enter an appearance for (giving the names of all persons for whom appearance is to be entered) in this action.

Dated the day of 19 .

(Signed)  
(Address)

||| If conditional appearance allowed, add: The defendant by order, of dated the day of 19 , is permitted to appear without prejudice to his right to dispute the jurisdiction of the Court in this action (or as the case may be).

In case the defendant wishes to dispute the amount claimed, and to make no other defence, add, The defendant disputes the amount claimed by the plaintiff (or the defendant contends that the amount due to the plaintiff is \$ only, or the defendant contends that the amount due to the plaintiff is, \$ for principal and \$ for interest, since the day of etc., and no more), as the case may be.

In action for the possession of land if the defendant limits his defence, add The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to etc.

No. 7.

*Notice Limiting Defence (Rule 55).*

The defendant C.D., limits his defence to part only of the property mentioned in the writ in this action, that is to say, to the northwest quarter of the lot.

Dated the day of 19 :

A.B., solicitor for defendant.

No. 8.

*PLEADINGS.*

NOTE.—The nature of each pleading should be stated at the head thereof, e.g., "Statement of Claim" or "Statement of Defence and Counter-claim of C.D."

*Statement of Claim.*

1. (Set out concisely in convenient paragraphs a statement of the material facts relied upon).
2. The plaintiff claims (state the relief claimed)
3. The plaintiff proposes that this action should be tried at

Delivered the day of 19 , by  
X.Y., of Plaintiff's Solicitor.

NOTE.—The date of the writ should be given at the head of the Statement of Claims, thus (Writ issued the day of 19 ).

No. 9.

*Statement of Defence.*

1. The defendant admits the allegations in the and paragraphs of the plaintiff's statement of claim.

2. (Set out concisely in convenient paragraphs, a statement of the material facts relied upon.)

Delivered, etc.

No. 10.

*Reply.*

1. (If desired) The plaintiff joins issue upon the defendant's statement of defence.

2. (Where plaintiff does not introduce into his statement of claim, originally or by way of amendment, the allegations necessary by way of reply to the defence (set out concisely in convenient paragraphs the material facts relied upon in reply.)

Delivered, etc.

No. 11.

*Statement of Defence and Counter-claim.*

1. (Set out as in Form No. 11 the material facts relied on by way of defence.)

2. By way of counter-claim the defendant says: (Set out by reference to paragraphs of defence, or, as in the case of a statement of claim, the material facts relied on by way of counter-claim.)

3. The defendant claims (as in a statement of claim.)

Delivered, etc.

NOTE.—Where a third person as well as the plaintiff is made a party to a counter-claim, add a second style of cause, thus:

And between C.D., Plaintiff,  
and  
A.B. and E.F., Defendants.  
(By counter-claim.)

No. 12.

*Reply to Defence and Counter-claim.*

(Where plaintiff does not introduce into his statement of claim, originally or by amendment, the allegations necessary by way of reply to the defence. Set out the material facts relied on by way of reply. A joinder of issue on the defence or paragraphs thereof may be added.)

Delivered, etc.

No. 13.

*Stated Case (Rule 126)*

The following case is stated for the opinion of the Court under an order of the Honourable Mr. Justice \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_, made pursuant to Rule \_\_\_\_\_ (or as the case may be. Here state the material facts of the case bearing upon the question of law to be decided.)

The question (or questions) for the opinion of the Court is (or are)

First—Whether, etc.

Second—Whether, etc.

(Signatures.)

No. 14.

*Certificate of Service of Foreign Process (Rule 31).*

I, \_\_\_\_\_, Registrar of the Supreme Court of Ontario, hereby certify that the documents annexed hereto are as follows:—

(1) The original letter of request for service of process received from the Court of \_\_\_\_\_ at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ in the matter of \_\_\_\_\_ versus \_\_\_\_\_, and \_\_\_\_\_.

(2) The process received with such letter of request, and

(3) The evidence of service upon the person named in such letter of request duly sworn to before and verified by a Notary Public duly appointed for Ontario under his hand and official seal.

And I certify that such service, so proved, and the proof thereof are such as are required by the law and practice of the Supreme Court of Ontario regulating the service of legal process in Ontario, and the proof thereof.

And I certify that the cost of effecting such service amounts to the sum of \$

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

No. 15.

### General Form of Affidavit.

I, *E. F.* of (*place of residence and description or addition*) make oath and say as follows:—

Or We *E*, *F*, and *G*, *H*, etc., severally make oath and say as follows:—

1.

2.

3. *If necessary, And I, the said E. F., for myself say*

etc.

Sworn [if there be more than one deponent by the said naming each deponent] before me at the \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A.D.

A Commissioner for taking affidavits in and for the County of

An affidavit for use on a motion should by indorsement show on whose behalf it is filed; e.g., "Affidavit of John Smith filed on behalf of the plaintiff."

No. 16.

*Form or Jurat in the case of an illiterate person.*

Sworn before me at the \_\_\_\_\_ of \_\_\_\_\_ in the County  
of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_, the said  
affidavit having been first read over in my presence to the deponent (or  
the deponent *E. F.*) who seemed perfectly to understand the same and  
signed the same (or made his mark thereto) in my presence.

A Commissioner, etc.

No. 17.

*Affidavit of Service of Writ of Summons.*

I, of make oath and say  
as follows:—

(1) I did on        day, the        day of        19     , personally serve *C. D.*, the above-named defendant in this action with a true copy of the writ of summons (*or* notice of the writ of summons) herein hereto annexed, by delivering the same to and leaving the same with the said defendant on the day aforesaid at        in the County of        .

(2) Upon the said copy so served as aforesaid were indorsed at the time of such service true copies of all the indorsements appearing upon the said original writ of summons (or notice) except the indorsement hereinafter mentioned.

(3) To effect such service, I necessarily travelled miles.

(4) Subsequently, namely upon the                    day of  
I did indorse upon the said original writ of summons (*or* notice) the day  
of the month and week of such service.

Sworn, &c.

No. 18.

*Notice to Produce Documents (Rule 348)*

Take notice that you are required within ten days from this date to make discovery on oath of the documents which are or have been in your possession or power relating to any matters in question in this action and to produce and deposit the same with the proper officer of this Court for the usual purposes, and that you are also required to serve a copy of the affidavit upon the undersigned forthwith after it shall have been filed.

Dated this                    day of                    19

M.N.

Plaintiff's Solicitor.

To *L.K., Esq.*,  
Defendant's Solicitor.

No. 19.

*Affidavit as to Documents*

I, the above-named defendant, *C.D.*, make oath and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. [Here state upon what grounds the objection is made, and verify the facts as far as may be.]

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on (state when).

6. [Here state what has become of the last-mentioned documents, and in whose possession they now are.]

7. According to the best of my knowledge, information and belief, I have not now, and never had in my possession, custody or power, or in the possession, custody or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto, and the pleadings and other proceedings in the action.

Sworn, &c.

No. 20.

*Affidavit on production when made by an officer of a Corporation*

I, \_\_\_\_\_ of \_\_\_\_\_, make oath and say as follows:

1. I am the (here state the name of the office held by the deponent in the service of the Company on whose behalf he makes the affidavit), and as such, have knowledge of all documents which are, or have been, in the custody or possession of the said (company), relating to the matters in question in this action.

2. I am cognizant of the matters in question in this action.

3. The said defendants have in their possession or power, the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.

4. The said defendants object to produce the said documents set forth in the second part of the said first schedule hereto.

5. (*Here state on what grounds the objection is made, and verify the facts as far as may be.*)

6. The said defendants have had, but have not now, in their possession or power, the documents relating to the matters in question in this action set forth in the second schedule hereto.

7. The last-mentioned documents were last in the possession or power of the said defendants on (*state when*).

8. (*Here state what has become of the last-mentioned documents, and in whose possession they now are.*)

9. According to the best of my knowledge, information and belief, the said defendants have not now, and never had, in their possession, custody, or power, or in the possession, custody, or power of myself, or of any of their solicitors or agents, or of any person or persons whomsoever, on their behalf any (*proceed as in last form*).

Sworn, &c.

No. 21.

*Praecipes*

NOTE.—A praecipe for the action of any officer should contain a concise statement of what is desired and where what is sought is authorized by an order it should be referred to in the praecipe and should be produced. All particulars, save those appearing in the order, necessary for the officer's action should be given.

The following are given as examples.

Required in pursuance of order dated \_\_\_\_\_ to renew the  
writ of summons in this action,

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_

(Signed)  
Solicitor for the \_\_\_\_\_

Required in pursuance of order dated \_\_\_\_\_ a writ of habeas corpus  
*ad testificandum* directed to the \_\_\_\_\_ to bring \_\_\_\_\_ before

Required in pursuance of order [*or* Master's certificate] dated \_\_\_\_\_  
a commission to examine witnesses directed to \_\_\_\_\_

Required a writ of *fieri facias* directed to the sheriff of \_\_\_\_\_ to  
levy against C.D. \_\_\_\_\_ the sum of \$ \_\_\_\_\_  
and interest thereon at the rate of \$ \_\_\_\_\_ per centum per  
annum from the \_\_\_\_\_ day of \_\_\_\_\_ [and \$ \_\_\_\_\_  
costs] to \_\_\_\_\_  
Judgment [*or* order] dated \_\_\_\_\_ day of \_\_\_\_\_  
Taxing master's certificate, dated \_\_\_\_\_ day of \_\_\_\_\_

Required a writ of *venditioni exponas* directed to the sheriff of to sell the goods and chattels (or lands and tenements) of *C.D.*, taken under a writ of *fieri facias* in this action tested day of

Set down this appeal from the order [or judgment] of in this action dated the day of , 19

Enter (or set down) this action for trial at the sittings at commencing on

NOTE.—A *praeceipe* to set down for argument may be indorsed on the notice of motion.

No. 22.

*what is the style of case no.*

*Third Party Notice (Rule 165)*

To *X.Y.* of the of

Take notice that this action has been brought by the plaintiff against the defendant [as surety for *M.N.* upon a bond conditioned for payment of \$2,000 and interest to the plaintiff.

The defendant *C.D.* claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are his co-surety under the said bond, or, also surety for the said *M.N.*, in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of 19 .]

*Or* [as acceptor of a bill of exchange for \$500, dated the day of 19 , drawn by you upon and accepted by the defendant, *C.D.*, and payable three months after date.

The defendant *C.D.* claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

*Or* [To recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,900 tons of coal.

The defendant *C.D.* claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C.D.*, or your liability to the defendant *C.D.*, you must cause an appearance to be entered for you within ten days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant *C.D.*, and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you.

(Signed) *C.D.*

(or *X.Y.*, Solicitor for the defendant, *C.D.*)

Issued from the office of the Supreme Court at , where appearance may be entered.

Date

Signature of Officer.

No. 23.

*Summons to Defendant added by Counter-claim (Rule 112)*

(Court and Cause.)

Name and title of the Sovereign.

To *X.Y.* of, &c.Whereas in this action the defendant has filed a counter-claim against the plaintiff and you the said *X.Y.*

We command you that within ten days after service upon you of this summons and of the statement of claim and statement of defence and counter-claim to be served herewith, you do cause an appearance to be entered for you and your defence, if any, to the said counter-claim to be delivered, and take notice that in default of your so doing the plaintiff by counter-claim may proceed thereon without further notice to you and you will be deemed to admit the statements of the said counter-claim and judgment will be given accordingly.

Your appearance may be entered and defence filed at

Witness, &amp;c.

Issued, &amp;c.

## NOTICES

No. 24.

*Notice of payment into Court*

Take notice that the defendant has paid into Court \$ in satisfaction of the plaintiff's claim [or the plaintiff's claim for, &amp;c.].

No. 25.

*Acceptance of sum paid into Court*

Take notice that the plaintiff accepts the sum of \$ paid by you into Court in satisfaction of his claim herein (or of his claim for, &amp;c.).

No. 26.

*Confession of Defence arising pending action (Rule 164)*

The plaintiff confesses the defence stated in the paragraph of the defendant's statement of defence [or, of the defendant's further statement of defence].

No. 27.

*Confession of Action for Recovery of Land (Rule 55)*I, the defendant *C.D.*, hereby confess this action (or, confess this action as to part of the land claimed, namely: *describe the part*).

No. 28.

*Notice of Discontinuance (Rule 321)*

Take notice, that the plaintiff hereby wholly discontinues this action (or, withdraws so much of his claim in this action as relates to, &amp;c.).

(If not against all the defendants add as against the defendant *C.D.*)

No. 29.

*Notice to Produce Documents referred to in Pleadings (Rule 351)*

Take notice that the [plaintiff or defendant], requires you to produce for his inspection the following documents referred to in your [statement of claim or defence or affidavit sworn on the 19 day of

No. 30.

*Notice to Inspect Documents (Rule 351 (2))*

Take notice that you can inspect the documents mentioned in your notice of the 19 day of A.D. [except the deed numbered in that notice] at my office, on the day next the instant, between the hours of 12 and 4 o'clock.

*Or*, that the [plaintiff or defendant] objects to giving you inspection of the documents mentioned in your notice of the 19 day of A.D. on the ground [state the ground]:

No. 31.

*Jury Notice (O.J.A., Sec. 57)*

"The Plaintiff (or the Defendant, as the case may be) requires that the issues in this cause be tried (or the damages in this cause be assessed) by a jury."

No. 32.

*Notice of Trial (General) (Rule 246)*

Take notice of trial of this action [or the issues in this action ordered to be tried] at for the day of next.

No. 33.

*Notice of Trial (Toronto Non-jury Sittings) (Rule 250)*

Take notice that this action [or the issues in this action ordered to be tried] was [or were] set down on the day of 19 for trial at the Toronto non-jury sittings.

No. 34.

*Notice of Motion to Court (Rule 213)*

Take notice, that the Court will be moved on behalf of the at Osgoode Hall, Toronto (or as may be) on day the day of 19, at o'clock in the forenoon, or so soon thereafter as counsel can be heard, for an order that (state the object of the intended application) or for such other order as may seem just. [In cases where it is necessary to set out the grounds of the motion, add upon the following grounds, stating them concisely].

And take notice that in support of such motion will be read (state the affidavits or other evidence to be used).

Dated the day of 19

(Signed)

To Solicitor for the  
Solicitor for

No. 35.

*Notice of Motion in Chambers (Rule 213)*

Take notice that a motion will be made on behalf of before the presiding Judge in Chambers (or the Master in Chambers, or as the case may be) at Osgoode Hall, in the City of Toronto, (or as the case may be) on day the day of 19 , at o'clock in the noon, or so soon thereafter as the motion can be heard, for an order for (state object of applications).

And take notice, &c. (as in preceding form).

No. 36.

*Notice to Produce at the Trial*

Take notice that you are hereby required to produce and show to the Court on the trial of this action all books, papers, letters, copies of letters, and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in this action, and particularly the following: (setting them out.)

Dated, &c.

(Signature.)

To

Description of documents.

No. 37.

*Notice to Admit Documents (Evidence Act, R.S.O. 1927, Ch. 107, Sec. 49)*

Take notice that the plaintiff [or defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff] his solicitor or agent at , on , between the hours of and the defendant [or plaintiff] is hereby required, within 4 days from the said day, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies, and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

(Signature.)

Description of documents.

No. 38.

*Indorsement on Office Copy of Judgment or Order of Reference when Parties Added (Rules 86 and 404)*

To (the person upon whom service is to be made).

Take notice, FIRST, that from the time of service of this notice you will be bound by the proceedings in this cause in the same manner as if you had originally been made a party, unless you within ten days after the service hereof apply to the Court to add to, vary or set aside the within judgment. And SECONDLY, that you may upon service of notice upon the plaintiff attend the proceedings under the within judgment.

No. 39.

*Indorsement on the Copy Served of an Order Adding a Party (Rule 404)*

To A.B. (the person upon whom service has been directed).

If you wish to apply to discharge the within order or to add to, vary, or set aside, the judgment in this cause, you must do so within ten days from the service hereof. (*When the order fixes a time for the further proceedings, add*) And if you fail to move to discharge the said order or to add to, vary, or set aside the judgment, and fail to attend at the time and place appointed by said order, either in person or by your solicitor, such order will be made and proceedings taken, in your absence, as may seem just and expedient; and without any further notice you will be bound by the judgment, and the further proceedings in the cause, in the same manner as if you had been originally made a party.

No. 40.

*Notice to Incumbrancers (Rule 470)*

Whereas an action has been instituted by the above-named plaintiff for the foreclosure (or sale) of (or enforcement of a lien on) certain lands (*insert description of lands*) and I have been directed by the judgment made in this cause, and dated the                    day of                   , to inquire whether any person, other than the plaintiff has any charge or lien, or incumbrance upon the said estate. And whereas it has been made to appear before me that you have each some lien, charge or incumbrance upon the said estate, and I have therefore caused you to be made part to this action, and have appointed the                    day of                   , at                    o'clock in the                    noon, for you to appear before me, at my Chambers at                   , either in person or by your solicitor, to prove your claims.

Now you are hereby required to take notice: 1st. That if you wish to apply to discharge my order making you a party, or to add to, vary, or set aside the judgment, you must do so within ten days after the service hereof; and if you fail to do so, you will be bound by the judgment, and the further proceedings in this cause as if you were originally made a party to the action. 2nd. That if you fail to attend at the time and place appointed, you will be treated as disclaiming all interest in the land in question, and it will be dealt with as if you had no claim thereon, and your claim will be in fact foreclosed.

Dated this                    day of                    A.D. 19

*W. L., Master.*

No. 41.

*Notice to Parties by Writ Having Incumbrances (Rule 472)*

Having been directed by the judgment in this action to inquire whether any person other than the plaintiff has any lien, charge or incumbrance upon the lands in question in this action subsequent to the plaintiff's claim, and to take an account of the amount due to the plaintiff and any such person. And it having been made to appear that you may have some lien, charge or incumbrance thereon you are hereby notified that I have appointed                    day, the                    day of                    next at my Chambers in the Court House at                    at                    o'clock in the                    noon to proceed with the said inquiry and to determine the amount of the claim of the plaintiff, and of such incumbrancers as may come in and prove their claims before me.

If you fail to attend upon such appointment, and to prove your claim, the reference may proceed in your absence, and you will receive no further notice of the proceedings in this action, and you will be treated as disclaiming any lien, charge or incumbrance upon the said lands, and will stand foreclosed from any such claim.

Dated this                    day of                    19                    *W. L., Master.*  
To

## No. 42.

*Notice to All Original Defendants (Rule 472)*

Having been directed by the judgment in this action to inquire whether any person other than the plaintiff has any lien, charge or incumbrance upon the lands in question in this action subject to the plaintiff's claim thereon.

You are hereby notified that it has been made to appear to me that the persons named in the schedule hereto may have some lien, charge or incumbrance thereon, and I have, therefore, caused such of them as are not already parties thereto to be added as parties in my office, and have appointed        day, the        day of        next at my Chambers in the Court House at        at        o'clock in the        noon to inquire and determine whether the said parties have any such lien, charge or incumbrance, and to fix and ascertain the amount thereof, and the amount of the plaintiff's claim upon his security.

If you do not then and there attend, the reference will be proceeded with in your absence, and you will receive no further notice of the proceedings in this action.

Dated this        day of        19        .

*W.L., Master.*

To

SCHEDULE OF INCUMBRANCERS  
E.g.

	Nature of claim.
A. B.	Mortgage dated.
C. D.	Execution.
E. F.	Mechanic's lien.

## No. 43.

*Advertisement for Creditors (Rule 412)*

(Court and Cause not necessary)

## TO THE CREDITORS OF A.B.

Pursuant to a judgment [or an order] in an action in the Supreme Court of Ontario of A. against B., the creditors of A.B., late of        in the County of       , who died in or about the month of        19       , are, on or before the        day of        19       , to send by post, prepaid, to E.F., of       , the solicitor for the defendant C.D., the executor [or administrator] of the deceased [or as may be directed] their Christian and surnames, addresses and descriptions, the full particulars of their claims, a statement of their securities, and the nature of the securities (if any) held by them; or in default thereof, they will be peremptorily excluded from the benefit of the said judgment [or order]. Every creditor holding any security is to produce the same before me, at my Chambers, at        on the        day of        19       , at        o'clock in the        noon, being the time appointed for adjudication on the claims.

Dated this        day of

, 19        .

*G.B., Master.*

## No. 44.

*Notice to Creditors to Produce Vouchers and Documents (Rule 413)*

You are hereby required to produce, in support of the claim sent in by you, against the estate of A.B., deceased [describe any document required], before me, at my Chambers, at, &c., on the        day of        19       , at        o'clock in the        noon.

No. 45.

*Notice to Creditor to Prove his Claim (Rule 413)*

You are hereby required to prove the claim sent in by you against the estate of *A.B.*, deceased. You are to file such affidavit as you may be advised in support of your claim, give notice thereof to Master [or as the case may be], on or before the day of 19 , and attend personally, or by your solicitor, at his Chambers, on the day of 19 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

No. 46.

*Notice to Creditor that Claim Allowed*

The claim sent in by you against the estate of *A.B.*, deceased, has been admitted at the sum of \$ [with interest thereon at \$ per cent. per annum, from the day of , 19 , and \$ for costs, or as the case may be].

*If part only admitted, add:* If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file [&c., as in Form No. 48].

No. 47.

*Notice that Cheques may be Received (Rule 436)*

The cheques for the amounts directed to be paid to the creditors of *A.B.*, deceased, by an order made in this action [or matter] dated the day of , 19 , may be obtained at the Accountant's Office, in Osgoode Hall, Toronto, on and after the day of , 19 .

No. 48.

## REPORTS, ETC., BY MASTERS, ETC.

*Form of Report in Administration Suit*

Date

Pursuant to the judgment herein made, dated the day of 19 , having caused an office copy thereof to be served upon [state the names of persons served, and also the names of those upon whom service has been dispensed with, and the reason for dispensing with service], I proceeded to dispose of the matters referred to me, and thereupon was attended by the solicitors for all parties interested [or as the case may be], and I find as follows:

1. The personal estate not specifically bequeathed of the testator come to the hands of the executors, and wherewith they are chargeable, amounts to the sum of \$ , and they have paid, or are entitled to be allowed thereout, the sum of \$ , leaving a balance due from [or to] them, of \$ , on that account.

[If no personal estate, say: No personal estate has come to the hands of the executors, nor are they chargeable with any].

2. The creditors' claims sent in pursuant to my advertisement in that behalf and which have been allowed, are set forth in the first schedule hereto, and amount altogether to \$ .

[If no creditors say: No creditor has sent in a claim pursuant to my advertisement in that behalf, nor has any such claim been proved before me].

3. The funeral expenses of the testator amounting to \$ have been paid by the executors and are allowed to them in the account of personal estate.

4. The legacies given by the testator are set forth in the second schedule hereto, and with the interest therein mentioned, remain due to the persons named [or as the case may be].

5. The personal estate of the said testator outstanding or undisposed of, is set forth in the third schedule hereto.

*In this third schedule personal estate not specifically bequeathed should be set forth separately from the other personalty outstanding or undisposed of. If there is no specific bequest, it should be so stated in the body of the report.*

6. The real estate which the said testator was seized of or entitled to, and the incumbrances (if any) affecting the same, are set forth in the fourth schedule hereto.

7. The rents and profits of the testator's real estate received by the said executors, or with which they are chargeable, amount to \$ and they have paid, or are entitled to be allowed thereout, the sum of \$, leaving a balance due from [or to] them of \$ on that account.

[If no rents, etc., received, say: No rents and profits have come to the hands of the said executors, nor are they chargeable with any].

8. I have allowed the said executors the sum of \$ as a compensation for their personal services in the management of the said estate.

9. I have caused the real estate (other than parcels which were specifically devised) to be sold and the purchasers have paid their purchase money into Court.

10. In the schedule I have shown how the money in Court is to be dealt

*The First Schedule Referred to in the Foregoing Report*

No.	NAMES OF CREDITORS	PRINCIPAL	INTEREST ALLOWED		Costs of this Suit	TOTAL
			Rate per Cent	Amount to date of Report		
		\$ c.		\$ c.	\$ c.	\$ c.
	[Distinguish any which are secured by mortgage, lien, or otherwise entitled to any priority.]					

[No general form can well be framed for the other Schedules, but in all cases brevity is to be studied. Where particulars are given they should show merely the general character of the things described; as, for instance,

the Schedule of outstanding personalty may say: A number of book debts outstanding amounting in the aggregate to \$ ; a quantity of household furniture and effects valued at \$ ; and the like short particulars should be given in other cases. Lands should be described without setting forth metes and bounds.]

No. 49.

*Standing Conditions of Sale (Rule 441)*

1. No person shall advance less than \$10 at any bidding under \$500, nor less than \$20 at any bidding over \$500, and no person shall retract his bidding.
2. The highest bidder shall be the purchaser; and if any dispute arise as to the last or highest bidder, the property shall be put up at a former bidding.
3. The parties to the action, with the exception of the vendor, (and, naming any parties, trustees, agents, or others, in a fiduciary situation), shall be at liberty to bid.
4. The purchaser shall, at the time of sale, pay down a deposit, in proportion of \$10 for every \$100 of the purchase money, to the vendor, or his solicitor; and shall pay the remainder of the purchase money, on the      day of      next; and upon such payment, the purchaser shall be entitled to the conveyance, and to be let into possession; the purchaser at the time of sale to sign an agreement for the completion of the purchase.
5. The purchaser shall have the conveyance prepared at his own expense, and tender the same for execution.
6. If the purchaser fails to comply with the conditions aforesaid, or any of them, the deposit and all other payments made thereon, shall be forfeited, and the premises may be resold; and the deficiency, if any, by such re-sale, together with all charges attending the same, or occasioned by the defaulter, are to be made good by the defaulter.

No. 50.

*Report on Sale (Rule 446)*

Pursuant to the judgment, bearing date the      day of      , and made in this cause, I have, in the presence of (or, after notice to), all parties concerned, settled an advertisement and particulars and conditions of sale, for the sale of the lands mentioned or referred to in the said judgment (or order), and such advertisement having been published, according to my directions, the said lands were offered for sale by public auction, according to my appointment, on the      day of      , by me (or by Mr.      of      , appointed by me for that purpose, auctioneer), and such sale was conducted in a fair, open and proper manner, when      of      was declared the highest bidder for, and became the purchaser of the same, at the price or sum of \$      , payable as follows (set out shortly the conditions of sale as to payment of the purchase money.)

All which having been proved to my satisfaction by proper and sufficient evidence, I humbly certify.

*SUBPOENAS, ETC., FOR EXAMINATION OF WITNESSES, ETC.*

(See general note at head of forms).

No. 51.

*Subpoena Duces Tecum (General Form) (Rule 273)*

Name and title of Sovereign.

To , greeting.

We command you to attend before at on day the day of 19 , at the hour of in the noon, and so from day to day [until the above cause is tried, or as may be] to give evidence [or for examination for discovery or as may be] on behalf of the and also to bring with you and produce at the time and place aforesaid (specify documents to be produced.)

Witness the Honourable , Chief Justice of Ontario, the day of 19 .

No. 52.

*Subpoena (at Trial) (Rule 273)*

Name and title of Sovereign.

To , greeting.

We command you to attend at the sittings of the Supreme Court of Ontario in and for the county of , to be holden at on day the day of 19 , at the hour of in the noon, and so from day to day during the said Sittings until the above cause is tried, to give evidence on behalf of the , and also bring with you and produce at the time and place aforesaid [here specify documents to be produced].

Witness the Honourable , Chief Justice of Ontario, the day of 19 .

No. 53.

*Habeas Corpus ad Testificandum (Rule 230)*

Name and title of Sovereign.

To the [keeper of our prison at].

We command you that you bring , who it is said is detained in our prison under your custody, before at on day the day of at the hour of in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the . And that immediately after the said shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, etc.

No. 54.

*Warrant for Arrest of a Defaulting Witness (Rule 276)*

Province of Ontario,

County of

To E. F., Sheriff, etc.

Whereas proof has been made before me that H. N. was duly subpoenaed to give evidence on behalf of the plaintiff (or as the case may be), in this cause at the sittings of (as the case may be) at Toronto (or as the case may be,) which commenced on the day of 19 , that the presence of the said H. N. is material to the ends of justice; and that the said H. N. has failed to attend in accordance with the requirements of the subpoena.

These are therefore to command you to take the said *H. N.* and to bring and have him before me at the said sittings, or before such other Judge as may be presiding thereat, there to testify what he may know concerning the matters in question in the said cause, and that you detain him in your custody until he shall have given his evidence, or until the said sittings shall have ended, or until other order be made by the Court concerning him.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_ A.D.

19\_\_\_\_, at \_\_\_\_\_

No. 55.

*Commission to Examine Witnesses (Rule 277)*

*(Court and Cause)*

Name and title of Sovereign.

To \_\_\_\_\_, greeting.

Know ye that We, in confidence of your prudence and fidelity, have appointed you a Commissioner for the purpose of taking evidence in the above cause now pending in Our said Court; and We do hereby give you full power and authority to administer all necessary oaths and to do all things necessary for the taking of the evidence more particularly mentioned in the order for the issue of this Commission, a copy whereof is hereunto attached. Forthwith after taking such evidence you will return the same, together with these presents. In the execution of this Commission, you will have due regard to the general rules of practice relating to Commissions, hereunto appended, and the terms of the order hereto attached and the instructions hereunder written.

Witness the Honourable \_\_\_\_\_, Chief Justice of Our said Court at Toronto, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord one thousand nine hundred and \_\_\_\_\_

*Signature of Officer.*

Issued from the \_\_\_\_\_ office \_\_\_\_\_ of the Supreme Court of Ontario, at \_\_\_\_\_ in the County of \_\_\_\_\_ under and pursuant to the order of \_\_\_\_\_ bearing date the day of \_\_\_\_\_, A.D. 19\_\_\_\_\_.

*Signature of Officer.*

INSTRUCTIONS TO COMMISSIONER

- (1) See that proper notice is given to the parties concerned.
- (2) Follow strictly all the requirements of the general rules and special order attached hereto.
- (3) Before acting on this commission take the commissioner's oath hereon indorsed.
- (4) After the commission has been executed, attach the depositions, exhibits and all other papers to the commission, and complete and sign the "Commissioner's Return" indorsed hereon.
- (5) Securely enclose the commission and attached papers, and mail them in a sealed envelope to postage prepaid. Indorse the envelope as follows: "Commission in \_\_\_\_\_ vs. \_\_\_\_\_ (Signature of Commissioner)."

## 6. USE THE FOLLOWING FORMS OF OATH

*Clerk's Oath*

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you are directed and employed by the commission to take, write down, transcribe or engross the said questions and depositions. So help you God.

*Witnesses' Oath*

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

*Interpreter's Oath*

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which shall be administered to, and all and every the questions which shall be exhibited or put to all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as you are directed and employed by the said commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

7. Notice of the execution of this commission is to be given to  
 , representing the plaintiff,  
 and to  
 , representing the defendant.

(Signature of Officer issuing Commission).

## GENERAL RULES

(Copy Rules 280 to 290, inclusive.)

NOTE.—The Commissioner's oath may be taken: In England or Ireland before a Commissioner authorized to administer oaths in the Supreme Court of Judicature of England or Ireland; in England or Ireland before a Judge of the Supreme Court of Judicature of England or Ireland; in Scotland before a Judge of the Court of Session or the Justiciary Court of Scotland; before a Judge of any of the County Courts of Great Britain or Ireland, within his county; in Great Britain or Ireland, or in any Colony of His Majesty, or in any foreign country, before the Mayor or Chief Magistrate of any City, Borough, or Town corporate, certified under the common seal of such City, Borough, or Town corporate; in any colony belonging to the Crown of Great Britain, or any dependency thereof, or in any foreign country before a Judge of any Court of Record or of supreme jurisdiction; in the British Possession in India, before any Magistrate or Collector certified to have been such under the hand of the Governor of such Possession; in Quebec, before a Judge or Prothonotary of the Superior Court or Clerk of the Circuit Court; in any foreign place, before any Consul, Vice-Consul or Consular Agent of His Majesty exercising his functions; before a Notary Public and certified under his hand and official seal; or before a Commissioner authorized by the laws of Ontario to take such affidavits.

## THE COMMISSIONER'S OATH

I,  
 do hereby swear that I will, according to the best of my skill and knowledge,  
 truly and faithfully and without partiality to any or either of the parties

in this case, take the evidence of each and every witness produced and examined by virtue of this commission, and will cause the said depositions so taken to be truly and faithfully transcribed and returned. So help me God.

(Signature of the Commissioner.)

Sworn before me at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signature and office of person before whom oath taken.)

RETURN TO THE WITHIN COMMISSION

The return to the within Commission appears by the depositions and papers thereunto annexed; and I, the undersigned Commissioner, do hereby certify that the proper oaths were administered by me to the Clerk taking down and transcribing the said evidence, and to the witnesses whose depositions are hereunto attached (and to any interpreter called upon by me to interpret the evidence of any of the said witnesses), and that the said depositions were duly and properly taken by me, and that the evidence was duly and correctly transcribed.

(Signature of Commissioner.)

ORDERS

NOTE.—In all orders except decretal orders and vesting orders the shortened style of cause shall be sufficient, e.g., Between John Jones and others, Plaintiffs, and Aaron Smith and others, Defendants. (Rule 190).

No. 56.

*Praecipe Order for Security for Costs (Rule 375)*

1. Upon application of the defendant, C.D., and it appearing by the indorsement on [the copy of the writ of summons] served on said defendant that the said plaintiff resides at \_\_\_\_\_ out of the jurisdiction of this Court.
2. It is ordered, that the plaintiff do within four weeks from the service of this Order, give security on his behalf in the penal sum of four hundred dollars, to answer the defendant's costs of this action, and that all proceedings be in the meantime stayed.
3. And it is further ordered, that in default of such security being given by the plaintiff this action be as against such defendant dismissed with costs, unless the Court or Judge upon special application for that purpose otherwise orders.

No. 57.

*Praecipe Order to Continue Proceedings (Rule 301)*

Upon the application of \_\_\_\_\_, alleging that since the \_\_\_\_\_ in this action, and about the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_, the above-named \_\_\_\_\_ departed this life, having (recite facts showing who are the legal representatives), who \_\_\_\_\_ now the legal representative of the said \_\_\_\_\_; and further alleging that it is desirable or necessary that this action should be continued at the suit of \_\_\_\_\_ as part \_\_\_\_\_ plaintiff thereto against \_\_\_\_\_ as part \_\_\_\_\_ defendant thereto.

It is therefore ordered that this cause may be continued at the suit of \_\_\_\_\_ as part \_\_\_\_\_ plaintiff thereto against \_\_\_\_\_ as part \_\_\_\_\_ defendant thereto (by order to proceed) and that the same and all proceedings therein do stand in the same plight and condition as they were in at the time of the \_\_\_\_\_ as aforesaid.

No. 58.

*Notice to be Indorsed Upon Such Order (Rule 302)*

Take notice that if you desire to discharge this Order you must apply to the Court for that purpose within ten days after the service of this Order upon you. (*When the Order is served upon a new party added by the Order add:*) The Proceedings in this action are being carried on in the (Central Office at Osgoode Hall, Toronto—or as the case may be) and (here shortly state the present position of the action).

No. 59.

*Praecipe Order to Tax a Solicitor's Bill Delivered (on Client's Application)*

(Solicitors Act, R.S.O. 1927, Ch. 194, Sec. 33)

In the Supreme Court of Ontario.

(Date.)

In the matter of *A.B.*, gentleman, one of the Solicitors of the Supreme Court of Ontario.

Upon the application of \_\_\_\_\_, and the applicant submitting to pay what, if anything, shall be found due to the said Solicitor upon taxation of the bill hereinafter mentioned.

It is ordered that the bill of fees, charges and disbursements delivered to the applicant by the above-named Solicitor be referred to \_\_\_\_\_ to be taxed.

No. 60.

*The same (on Solicitor's Application)*

[Title, date, etc., as in Form 59]

Upon the application of the above-named Solicitor

It is ordered that the bill of fees, charges and disbursements delivered by the said Solicitor to \_\_\_\_\_ be referred to \_\_\_\_\_ to be taxed.

There shall be below the signature of the officer the following notice:

*“Warning to the Client—The taxing officer will certify what, if anything, is due by you to the solicitor and, upon confirmation of his report, payment may be enforced by execution.”*

No. 61.

*Praecipe Order for Delivery and Taxation of a Solicitor's Bill of Costs.*

[Title, date, etc., as in Form 59]

Upon application of \_\_\_\_\_, and the applicant hereby submitting to pay what, if anything, shall be found due to the said solicitor upon the taxation of the bill hereinafter mentioned.

It is ordered that the above-named solicitor do, within 14 days from the service of this order, deliver to the applicant a bill of his fees, charges and disbursements and that the same, when delivered, be referred to the \_\_\_\_\_ to be taxed.

No. 62.

Court Order General Form (Rule 511, et seq.)

In the Supreme Court of Ontario

The Honourable The Chief Justice of the Common Pleas. } day the day of A.D. 19 .  
(or as the may be) } Between *A. B., etc.*, Plaintiffs,  
and  
*C. D., etc.*, Defendants.

1. Upon motion made this day unto this Court on behalf of the  
and upon hearing read and upon hearing counsel for  
(where necessary add no one appearing for  
though duly served with notice as by affidavit of appears).  
2. This Court doth order  
3. And this Court doth further order

*Signature of Officer.*

No. 63.

*Order in Chambers, General Form (Rule 511 et seq.)*

In the Supreme Court of Ontario

(Name of the Judge or officer thus)      }  
The Honourable Mr. Justice,  
In Chambers,  
or The Master in Chambers.  
(as the case may be)      }  
day, the      day of      A.D.  
Between *A. B.*, Plaintiff,  
and  
*C. D.*, Defendant.

No. 64

*Order for Service out of the Jurisdiction (Rule 25 et seq.)*

1. Upon the application of affidavit of counsel for the plaintiff , and upon reading the filed, and upon hearing the solicitor (or
2. It is ordered that the plaintiff be at liberty to issue a writ for service out of the jurisdiction on the defendant who resides at
3. And it is further ordered that service of the said writ of summons [and when necessary and of the Statement of Claim to be served therewith] and of this order upon the defendant at aforesaid, shall be good and sufficient service of the said writ [and when necessary and Statement of Claim] upon the said defendant.
4. And it is further ordered that the time for appearance to the said writ be within days after the service thereof [and when necessary and that the Statement of Defence be delivered within ten days after the time limited for appearance].

No. 65.

*Order for Particulars (Rule 138)*

1. Upon the application of , and upon reading the affidavit of , and upon hearing the solicitor (or counsel) for

2. It is ordered that the plaintiff (or defendant) deliver to the defendant (or plaintiff) [an account in writing of the particulars of the plaintiff's claim in this action (or particulars of the paragraph of the statement of claim or defence, stating in what as may be ordered)], and that unless such particulars be delivered within days from the date of this order [all further proceedings be stayed until the delivery thereof, or as may be ordered].

3. And it is further ordered that the costs of this application be

No. 66.

*Order to Dismiss for Want of Prosecution (Rule 323)*

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the solicitor (or counsel) for

2. It is ordered that this action be and the same is hereby dismissed for want of prosecution with costs, including the costs of this application, to be paid to the defendant by the plaintiff, forthwith after taxation.

No. 67.

*Stop Order (Rule 726)*

1. Upon the application of and upon reading the affidavit of filed, and upon hearing the solicitor for [the applicant] and the applicant by his solicitor submitting to be bound by any order the Court may make as to costs or damages occasioned by this order.

2. It is ordered that any costs or moneys now standing or hereafter to be paid into Court to the credit of this cause (or matter) to which the (naming the party) is entitled or which may be directed to be paid to him and any interest to accrue due thereon be not paid out or otherwise dealt with or disposed of without notice to the said (applicant.)

No. 68.

*Order for Commission to Examine Witnesses*

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the solicitor (or counsel) for

2. It is ordered that a commission may issue out of this Court directed to for the examination *vivâ voce* of witnesses on behalf of the said at

3. And it is further ordered that within days after service of this order the do serve a notice giving the name and place of business of agent in aforesaid, upon whom notice of the said examination may be served.

4. And it is further ordered that days previously to the sending out of the said commission, the solicitor of the said shall give to the solicitor of the notice in writing of the mail or other conveyance by which the commission is to be sent out.

5. And it is further ordered that upon the execution of the said commission the said commission and the depositions of the witnesses be without delay after the said commission shall have been executed transmitted to the office of the of the this Court at

No. 69.

*Order of Reference (O.J.A., Sec. 66, et seq.)*

1. Upon the application of \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed, and upon hearing the solicitor (or counsel) for \_\_\_\_\_
2. It is ordered that the following questions arising in this action, namely, \_\_\_\_\_ be referred for inquiry and report to \_\_\_\_\_
3. And it is further ordered that the costs of this application be \_\_\_\_\_

No. 70.

*Order of Reference (another form) (O.J.A. Sec. 66 et seq.)*

1. Upon motion this day made into this Court by counsel for the plaintiff in presence of counsel for the defendant upon hearing read the pleadings and the affidavit of \_\_\_\_\_ filed, and upon hearing counsel aforesaid.
2. The Court doth order that the [state whether all or some and, if so, which of the questions are to be tried] in this action be referred to for trial.
3. (To be used in a case where it is not necessary to reserve any questions as to costs or otherwise). And this Court doth further order that the defendant (or the party by whom any amount shall be found by the referee to be due) do pay to the plaintiff (or the party to whom such amount shall be found due) the amount which the \_\_\_\_\_ shall find to be payable, forthwith after the confirmation of the \_\_\_\_\_ report.
4. And the Court doth further order that the said \_\_\_\_\_ do determine the question of the costs of this action and of the said reference, and that the said costs shall be taxed and shall be paid as the said \_\_\_\_\_ shall direct.

No. 71.

*Order for Examination of Witnesses before Trial (Rule 271)*

1. Upon the application of \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed, and upon hearing the solicitor (or counsel) for \_\_\_\_\_
2. It is ordered that \_\_\_\_\_ a witness on behalf of the \_\_\_\_\_, who is said to be unable to attend the trial by reason of absence from the jurisdiction (or as the case may be) be examined *vivâ voce* on oath before \_\_\_\_\_ on \_\_\_\_\_ days' notice in writing of the time and place where the examination is to take place being given to the \_\_\_\_\_ solicitor.
3. And it is further ordered that the examination so taken or an office copy thereof may be read and given in evidence at the trial, saving all just exceptions, without any further proof of the absence (or as the case may be) of the said witness than the affidavit of the \_\_\_\_\_ or his solicitor as to his belief.

No. 72.

*Garnishee Order (Attaching Debts)*

In the Supreme Court of Ontario

The Master in Chambers (or as may be).

[Date.]

Between *A. B.*, Judgment Creditor,  
and  
*C. D.*, Judgment Debtor,  
and  
*E. F.*, Garnishee.

1. Upon the application of \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed, and upon hearing the solicitor (or counsel) for

2. It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, for the sum of \$\_\_\_\_\_, on which judgment the said sum of \$\_\_\_\_\_, remains due and unpaid, and any other judgments against the said judgment debtor entitled by law to share therein.

3. And it is further ordered that the said garnishee attend before the \_\_\_\_\_ in Chambers (or as the case may be) on \_\_\_\_\_ day the day of \_\_\_\_\_, 19\_\_\_\_\_, at \_\_\_\_\_ o'clock in the noon, on an application by the said judgment creditor that the said garnishee pay to the said judgment creditor the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

No. 73.

*Notice of Garnishee Order, in Lieu of Order, to be Served out of Ontario*

(Rule 590 [2])

To E. F., of

Take notice that an order has been obtained attaching all debts owing or accruing due from you to the above-named judgment debtor, to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, for the sum of \$\_\_\_\_\_, on which judgment the sum of \$\_\_\_\_\_, remains due and unpaid, and any other judgments against the said judgment debtor entitled by law to share therein.

And take further notice that an order has also been obtained appointing the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon, for the making of an application before \_\_\_\_\_ at \_\_\_\_\_ by the said judgment creditor for a further order that you pay to the said judgment creditor the debt due to the said judgment debtor from you, or so much thereof as may be sufficient to satisfy the said judgment; and an application will be made accordingly, and if you do not attend on the return of the said motion an order may be made in your absence.

No. 74.

*Garnishee Order (Final) (Rule 594)*

1. Upon the application of \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed, and the order herein dated the day of \_\_\_\_\_, 19\_\_\_\_\_, whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, for the sum of \$\_\_\_\_\_, on which judgment the sum of \$\_\_\_\_\_, remained due and unpaid, and upon hearing the solicitor (or counsel) for

2. It is ordered that the said garnishee do forthwith pay the debt due from him to the said judgment debtor into Court to the credit of this matter.

3. And it is further ordered that the costs of the judgment creditor of this application be first paid from the said money and that the balance be then paid to the sheriff of the County of \_\_\_\_\_ to be dealt with under the provisions of *The Creditors' Relief Act*.

No. 75.

*Interpleader Order (when Claim barred) (Rule 630)*

1. Upon the application of the said sheriff for an interpleader order, and upon reading the affidavit of \_\_\_\_\_ filed, and upon hearing the solicitor (or counsel) for \_\_\_\_\_ and the said claimant not appearing though duly served with notice as by affidavit of \_\_\_\_\_ appears \_\_\_\_\_
2. It is ordered that the claimant and all persons claiming under him be and they are hereby forever barred of and from all claim to the goods and chattels seized herein by the said sheriff as against \_\_\_\_\_, and that no action be brought against the above-named [sheriff] for or in respect to the seizure of said goods.
3. And it is further ordered that the costs of this application be \_\_\_\_\_

No. 76.

*Interpleader Order (when Claimant substituted as Defendant)*

1. Upon the application of \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed, and upon hearing the solicitor (or counsel) for \_\_\_\_\_
2. It is ordered that the above-named claimant be substituted as defendant in this action in lieu of the present defendant.
3. And it is further ordered that the costs of this application be \_\_\_\_\_

No. 77.

*Interpleader Order (when issue directed)*

1. Upon the application of the said sheriff for an interpleader order, and upon reading the affidavit of \_\_\_\_\_ filed, and upon hearing the solicitor (or counsel) for \_\_\_\_\_
2. It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of *fieri facias* issued herein, and pay the net proceeds of the sale, after deducting the expenses thereof, (or as otherwise ordered) into Court in this cause, to abide further order herein.

*Or*, It is ordered that upon payment into Court by the said claimant within \_\_\_\_\_ from this date of the sum of \$ \_\_\_\_\_ (or of the appraised value of the goods and chattels seized by the said sheriff herein, together with the expenses of appraisement), or upon the said claimant within the same time giving to the execution creditor security to the satisfaction of \_\_\_\_\_ for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment by the said claimant to the above-named sheriff of the possession money from (the date of his notice of motion or of the order or such date as may be proper), and upon production to the said sheriff of the Accountant's certificate that the money has been paid into Court, or the certificate of the said \_\_\_\_\_ that security has been given as aforesaid, the said sheriff do withdraw from the possession of the goods and chattels seized by him under the writ of *fieri facias* herein.

And it is further ordered that unless such payment be made (including the sheriff's possession money) or such security be given within the time aforesaid, or in case before the expiration of the time aforesaid, the claimant desires the said goods and chattels to be sold by the said sheriff the said sheriff proceed to sell the said goods and chattels, and pay the proceeds of the sale, after deducting the expenses thereof (or as otherwise ordered) and the possession money as aforesaid, into Court to the credit of this matter, to abide further order herein.

3. And it is further ordered that the parties proceed to the trial of an issue in the Supreme Court of Ontario, (or in the County Court of the County of ) in which the claimant (or execution creditor) shall be plaintiff and the execution creditor (or claimant) shall be defendant, and that the question to be tried shall be whether at the time of [insert here the delivery of the said writ to the sheriff or the seizure by the sheriff or the sale by the sheriff as the case may require] the goods and chattels seized [in case the claimant is plaintiff were the property of the claimant as against the execution creditor] [or in case the execution creditor is plaintiff were exigible under the execution of (the execution) as against the claimant].

4. And it is further ordered that such issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days thereafter and be tried at

5. And it is further ordered that the question of costs and all further questions be reserved to be disposed of by the Judge at the trial of the said issue, or if not so disposed of then to be disposed of in Chambers.

6. And it is further ordered that any other execution creditors desiring to take part in the contest of the said issue shall be at liberty to do so upon placing their executions against the goods of the defendant in the hands of the said sheriff within (ten) days from this date and upon notifying within the same time the solicitors for (an execution creditor) (who shall have the conduct of the said issue for all execution creditors taking part in it) of their desire to come in and of their agreement to contribute *pro rata* to the expense of the said contest according to the statute in that behalf.

7. And it is further ordered that no action be brought against the said sheriff for or in respect of the seizure of the said goods and chattels or for anything done under this order.

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No. 78.

*Interpleader Order (when summary trial)*

1. Upon the application of the sheriff of for an interpleader order and upon hearing read the affidavits of and upon hearing the solicitor (or counsel) for , and the claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner.

2. And it is ordered that

3. And it is further ordered that the costs of this application be

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No. 79.

*Interpleader Order (when claim for rent admitted)*

1. Upon the application of the sheriff of for an interpleader order, and upon reading the affidavit of filed, and upon hearing the solicitor (or counsel) for

2. It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of *fieri facias* issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

3. And it is further ordered that out of the proceeds of the said sale, (after deducting the expenses thereof, and rent, if any), the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

4. And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be

## No. 80.

*Order of Replevin (Rule 359)*

- Upon the application of the above-named plaintiff, and upon reading the affidavit of filed, and upon hearing the solicitor (or counsel) for
- It is ordered that the sheriff of (here insert the name of County, United Counties, District or City), do without delay take the security required by Rule 352 [and where Rule 363 applies add and Rule 363] and cause to be replevied to the plaintiff his goods, chattels and personal property following, that is to say: (here set out description of property as in the affidavit filed), which the said plaintiff alleges to be of the value of \$ , and to have been taken and unjustly detained (or unjustly detained, as the case may be) by the defendant, C.D., in order that the said plaintiff may have his remedy in that behalf.

3. And it is further ordered that the said sheriff do forthwith after the execution of this order, make return to (insert here the officer in whose office the appearance in the action is to be entered) what he shall have done in the premises, and do also return this order.

## No. 81.

*Order of Withernam (Rule 367)*

- Upon the application of the plaintiff, and it appearing by the return of the sheriff of the of , to the order of replevin made herein on the day of , that the goods, chattels and personal property mentioned in the said order have been elogned by the defendant, C.D., out of the bailiwick of the sheriff of , to places to him unknown so that he could not replevy the same to the said plaintiff.
- It is ordered that the said sheriff do forthwith take in withernam the goods, chattels and personal property of the said defendant, C.D., in his bailiwick, to the value of the goods, chattels and personal property by the said defendant, C.D., before taken, and do forthwith deliver them to the said plaintiff to be kept by him until the said defendant, C.D., delivers the goods, chattels and personal property last aforesaid to the said plaintiff.
- And it is further ordered that if the said plaintiff shall give security to the said sheriff as provided by law for the prosecution of the plaintiff's claims and for the return of the goods, chattels and property so to be taken in withernam as aforesaid, if the return thereof shall be adjudged, then the said sheriff do take security with two sufficient sureties from the said defendant, C.D., to answer to the said plaintiff for the taking and unjustly detaining of his goods, chattels and personal property aforesaid.

4. And it is further ordered that the said sheriff do forthwith make return to [the Central Office, Osgoode Hall, Toronto, or name the office in whose office the proceedings were commenced], what he shall have done in the premises, and do also return this order.

## No. 82.

*Order of Certiorari (Rule 623)*

- Upon the application of , and upon reading the affidavit of filed, and upon hearing the solicitor (or counsel) for
- It is ordered that do send to the Central Office at Osgoode Hall, Toronto (or as may be necessary) forthwith (or on the day of ) the , with all things touching the same, as fully and entirely as they remain in his custody, together with this order, that this Court may further cause to be done thereupon what it shall see fit to be done.

No. 83.

*Order of Prohibition (Rule 623)*

Style of cause thus:

In the matter of an action in the County of , wherein *A.B.* is plaintiff and *C.D.* is defendant:

1. Upon the application of , and upon reading the affidavit of , filed, and upon hearing the solicitor (or counsel) for , and it appearing that the said has [entered an action against] *C.D.* in the said Court, and that the said Court has no jurisdiction in the said [action] or to hear and determine the said [action] by reason that [state facts shewing want of jurisdiction].
2. It is ordered that the said be and he is hereby prohibited from further proceeding in the said [action] in the said Court.

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No. 84.

*Order for Arrest (R.S.O. 1927, Ch. 115, Sec. 2)*

1. Upon the application of , and upon reading the affidavit of , filed, and upon hearing the solicitor (or counsel) for
2. It is ordered that the sheriff of the County, United Counties or City where *C.D.*, the defendant (or one of the defendants), may be found, do forthwith arrest and take, or if already in custody, do detain the said *C.D.* and him safely keep until he shall have given security in this action for the sum of \$ , or shall by other lawful means be discharged from custody.
3. And it is further ordered that a copy of this order be served by the said sheriff on the said *C.D.*
4. And it is further ordered that the said do, within ten days after his arrest under this order, cause security to be put in for him in this Court and in this action, either by the deposit in Court of the said sum of \$ , or by bond or other security, pursuant to the Rules of Court in that behalf, conditioned that the defendant will pay the amount by any judgment in the action adjudged to be recovered or directed to be paid either as a debt or for damages or costs, or will render himself to the custody of the sheriff, or that his sureties will do so for him.

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No. 85.

*Order for Leave to Issue Execution Where Judgment Assigned and Execution Debtor Dead (Rule 566)*

Upon the application of *X.Y.Z.* and upon reading the affidavit of *E.F.* filed, and it appearing that since judgment was recovered in this action the said plaintiff assigned the same and the full benefit thereof and the moneys thereby secured to the said *X.Y.Z.* and it further appearing that on the day of , A.D. 19 , *C.D.*, the defendant herein, died intestate and that Letters of Administration to the estate of the said *C.D.*, deceased, were issued out of the Surrogate Court of the County of , in the Province of Ontario, on the day of , A.D. 19 , to *G.H.* as sole administratrix of the said estate of the defendant, *C.D.*, deceased;

It was ordered that the said *X.Y.Z.* be at liberty to issue forthwith a writ or writs of execution against the goods and chattels and lands and tenements which were of *C.D.*, the defendant, deceased, at the time of his death in the hands of *G.H.* to be administered to recover the full amount of the judgment debt, interest and costs and that the costs of this order fixed at \$ be added to the plaintiff's costs and that all moneys recovered thereon be paid to the said *X.Y.Z.*

## JUDGMENTS

NOTE.—The full style of cause is necessary in all judgments (Rule 190).

## No. 86.

*Default of Appearance or Defence in Case of Liquidated Demand*  
(Rule 37)

The day of , 19

The defendants [or the defendant, C.D.] not having appeared herein [or not having delivered any statement of defence], it is this day adjudged that the plaintiff recover against the said defendant \$ , and [costs to be taxed, or where the officer signing judgments is also the Taxing Officer, \$ for costs].

Judgment signed the day of , 19  
(Signature of Officer.)

*The following may be appended to any judgment at or after the signing of the judgment on production of the Taxing Officer's certificate:*

The above costs have been taxed and allowed at \$ , as appears by a taxing officer's certificate dated the day of , 19  
(Signature of Officer.)

## No. 87.

*Judgment in Default of Appearance in Action for Recovery of Land*  
(Rule 41)

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned, being (describing the land). [Where plaintiff is so entitled add "and do also recover against the said C.D. (the defendant) his costs to be taxed or \$ for costs."]

## No. 88.

*Judgment in Default of Defence in Action for Recovery of Land*  
(Rule 355)

No statement of defence having been delivered herein, it is this day adjudged that the plaintiff recover possession of the land in the statement of claim herein mentioned being and do also recover against the said C.D. (the defendant) [his costs to be taxed or \$ for costs].

## No. 89.

*Judgment in Default of Defence in Action for Recovery of Land with Damages*  
(Rule 42)

The defendant not having delivered any statement of defence it is this day adjudged that the plaintiffs recover possession of the land in the statement of claim herein mentioned, and described as in the County of , and costs to be taxed, and it is further adjudged that the plaintiffs recover against the defendant damages to be assessed.

No. 90.

*Judgment where Defendant Limits Defence to Part of Land Claimed  
(Rule 55)*

The defendant, *C.D.*, having by his appearance limited his defence to part of the land claimed, that is to say: (&c., &c.), it is this day adjudged that the said plaintiff do recover possession of the land in the writ (or statement of claim) mentioned, other than the land so claimed by the defendant, with the appurtenances and [costs to be taxed or \$ for costs].

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No. 91.

*Judgment of Seisin for Dower in Default of Appearance (Rule 40)*

The defendant not having appeared to the writ of summons, it is this day adjudged that the plaintiff do have seisin of her third part or dower in the lands in question in this action, and that the same be forthwith delivered to her and set out by metes and bounds.

(*If damages are claimed add And it is further adjudged that the plaintiff do recover against the defendant damages to be assessed.*)

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No. 92.

*Final Judgment in Default of Appearance or Defence, Recovery of Chattels (Rule 38)*

The defendants [or the defendant, *C.D.*] not having appeared herein [or not having delivered any statement of defence] it is this day adjudged that the plaintiff recover against the said defendant [or that the said defendant do forthwith deliver to the plaintiff] possession of the chattels in the writ [or statement of claim] mentioned, and do also recover against the said defendant his costs to be taxed [or \$ for costs].

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No. 93.

*Interlocutory Judgment in Default of Appearance or Defence where Demand Unliquidated (Rule 38 (2))*

No appearance having been entered to the writ of summons [or no statement of defence having been delivered by the defendant] herein;

It is this day adjudged that the plaintiff recover against the defendant the value of the goods or damages (or both, as the case may be), to be assessed.

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No. 94.

*Final Judgment in Default of Appearance or Defence, after Assessment of Damages (Rule 38 (3))*

No appearance having been entered to the writ of summons [or no statement of defence having been delivered by the defendant] herein, and the damages which the plaintiff was entitled to recover having been assessed at \$ , as by dated the 19 , appears, it is adjudged that the plaintiff recover against the defendant the sum of \$ and [costs to be taxed, or \$ for costs].

No. 95.

*Judgment for Plaintiff's Costs after Confession of Defence.*

The defendant in his statement of defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the                    day of                   , 19   , delivered a confession of that defence;

It is this day adjudged that the plaintiff recover against the defendant [costs to be taxed or \$                    for costs].

No. 96.

*Form of Judgment on Praecept for Sale or Foreclosure WITH REFERENCE AS TO INCUMBRANCES, etc., and Orders for Immediate Payment and Delivery of Possession (Rule 467).*

1. Upon reading the writ of summons issued in this action, and the statement of claim (*if any*) and an affidavit of service of the said writ on the defendant, and no appearance having been entered (*or* and the defendant having made default in delivering a defence),

2. It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for redemption or sale (*or* redemption or foreclosure) and that for these purposes this cause be referred to the Master at

3. (*Where judgment is for immediate payment add*, And it is further ordered and adjudged that the defendant                    do forthwith pay to the plaintiff the sum of \$                   , being the amount due to him for principal money, interest and costs at the date hereof; and upon payment of the amount due to the plaintiff (*when judgment is for sale add*, before the sale hereinbefore directed shall have taken place) that (subject to the provisions of section 2 of *The Mortgages Act*, the plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto.)

4. (*Or where judgment is for amount found due by Master add*) And it is further ordered and adjudged that the defendant do forthwith after the making of the Master's report pay to the plaintiff what shall be found due to him for principal money, interest and costs at the date of the said report and upon payment of the amount due to him [*where judgment is for sale add* before the sale hereinbefore directed shall have taken place] that [*subject to the provisions of section 2 of The Mortgages Act*] the plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto.)

5. (*Where judgment is for recovery of possession add*, And it is further ordered and adjudged that the defendant do forthwith deliver to the plaintiff, or to whom he may appoint, possession of the lands and premises in question, in this cause, or of such part thereof as may be in the possession of the said defendant.)

No. 97.

*Form of Judgment on Praecept for Foreclosure or Sale, ACCOUNT TAKEN BY REGISTRAR and Orders for Immediate Payment and Delivery of Possession (Rule 467).*

1. Upon reading the writ of summons issued in this action, and an affidavit of service of the said writ and no appearance having been entered;

2. This Court finds that the subsequent interest at the rate of per centum per annum on the sum of principal money secured by the indenture of mortgage in the writ of summons (or pleadings) mentioned, up to the day of next, being the time appointed for payment as hereinafter mentioned amounts to and that the costs of the plaintiff amount to which said subsequent interest and costs being added to the sum of claimed by the indorsement on the writ served on the defendant make together the sum of

3. And upon the said defendant paying the said sum of into the bank at the between the hours of ten o'clock in the forenoon and twelve o'clock noon of the day of next, to the joint credit of the plaintiff and the Accountant of the Supreme Court [where order for payment granted insert, or in case the plaintiff shall (where judgment is for sale add, before the sale hereinafter directed shall have taken place) recover the amount due to him under the order for payment hereinafter contained], it is ordered and adjudged (subject to the provisions of section 2 of *The Mortgages Act*), that the said plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto;

4. But in default of the said defendant making such payment by the time aforesaid, it is ordered and adjudged (where judgment is for foreclosure, after "adjudged," add "that the said defendant do stand absolutely debarred and foreclosed of and from all equity of redemption in and to the mortgaged premises"; where judgment is for sale, then after the word "adjudged," add "that the said premises be sold, with the approbation of the Master at ).")

5. (If judgment is for foreclosure omit this clause.) And it is further ordered and adjudged that the purchasers do pay their purchase money into Court, to the credit of this cause and that the same when so paid in be applied in payment of what has been found due to the said plaintiff together with subsequent interest and subsequent costs, to be computed and taxed by the said Master, and that the balance do abide the further order of the Court.

6. (Where judgment is for immediate payment add:) And it is further ordered and adjudged that the defendant do forthwith pay to the plaintiff the sum of being the amount due to him at the date hereof for principal money, interest and costs.

7. (Where judgment is for recovery of possession add:) And it is further ordered and adjudged that the defendant do forthwith deliver to the plaintiff, or to whom he may appoint, possession of the mortgaged premises, or of such part thereof as may be in the possession of the said defendant.

No. 98.

*Form of Judgment on Praecept for Redemption (Rule 467)*

1. Upon reading the writ of summons issued in this action and an affidavit of service of the said writ, and no appearance having been entered;

2. It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for the redemption of the premises in question, and that for this purpose the cause be referred to the Master at

3. And (subject to the provisions of section 2 of *The Mortgages Act*), it is further ordered and adjudged that upon the plaintiff paying to the defendant what shall be found due to him, or in case nothing shall be found due to the defendant then forthwith after the confirmation of the said Master's report, the defendant do reconvey the said mortgaged premises, and deliver up all documents relating thereto.

4. And it is further ordered and adjudged that in case the plaintiff shall make default in payment as aforesaid of what may be found due to the defendant that the plaintiff's action do stand dismissed out of this Court, with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof.

5. And it is further ordered and adjudged that in case nothing shall be found due from the plaintiff to the defendant that the defendant do pay the plaintiff his costs of this suit forthwith after the taxation thereof, and in case any balance shall be found due from the defendant to the plaintiff that the defendant do pay such balance to the plaintiff forthwith after the confirmation of the Master's report.

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No. 99.

*General Form of Judgment for Administration (Rules 608 and 519)*

1. Upon the application of the above-named plaintiff in the presence of the solicitor for the defendant [or no one appearing for the defendant although duly notified as by affidavit filed appears], and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for [the applicant or solicitors for all parties].

2. It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the administration and final winding up of the real and personal estate of and for the adjustment of the rights of all parties interested therein, by the Master at

3. And it is further ordered and adjudged that all balances which may be found due from the plaintiff or defendant [or any or either of them] to the said estate be, forthwith after the same shall have been ascertained as aforesaid, paid into Court to the credit of this cause, subject to the further order of the Court.

4. And it is further ordered and adjudged that such real and personal estate, or such parts thereof as the said Master may hereafter direct, be sold, as the said Master may direct, and that the purchasers do pay their purchase money into Court to the credit of this cause, subject to the order of the Court.

5. And it is further ordered and adjudged that the Master do execute conveyances for any infant parties who by reason of their tender years are unable to execute the same.

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No. 100.

*Form of Judgment for Partition or Sale (Rules 615 and 519)*

1. Upon the application of the above-named plaintiff in the presence of the solicitor for the defendant [or no one appearing for the defendant although duly notified as by affidavit filed appears] and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for [the applicant or all parties].

2. It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the partition or sale of the lands and premises in the said affidavits mentioned, and for the adjustment of the rights of all parties interested therein, or for a partition of part and sale of the remainder of the said lands as may be most for the interest of the parties entitled to share therein, by the Master at

3. And it is further ordered and adjudged that the said lands, or such part thereof as the said Master shall think fit, be sold, with the approbation of the said Master, freed from the claims of such of the incumbrancers thereon (if any) whose claims were created by parties entitled to the said lands before the death of the said testator [or intestate] as shall have consented to such sale, and subject to the claims of such of them as shall not have consented and freed also from the dower of [as the case may be], and that the said Master do execute the conveyances on behalf of such of the infant parties as, by reason of their tender years, are unable to execute the same, and that the purchasers do pay their purchase money into Court to the credit of this cause, subject to the order of the Court.

4. And it is further ordered and adjudged that, in the event of a partition of the whole of the said land, or in the event of a partition of a part and the proceeds of the sale of the remainder being insufficient to pay the costs in full, the costs, or so much thereof as remains unpaid, be borne and paid by the said parties according to their shares and interests in the said lands [if there be any infant parties interested in the estate add] and that the proportion of the said costs payable by the infant parties respectively be, and the same is hereby declared to be, a lien on their respective shares, and that the plaintiff do pay the guardian of the infant defendants his costs of this suit and that the same be added to his own costs.

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No. 101.

*Final Judgement on Motion (Chambers)*

1. Upon the application of [REDACTED], and upon reading the affidavit of [REDACTED] filed, and upon hearing the solicitor (or counsel) for
2. It is ordered and adjudged that the plaintiff do recover against the defendant the sum of \$ [REDACTED] and costs to be taxed,

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No. 102.

*Judgment After Trial (No. 1)*

In the Supreme Court of Ontario,

The Honourable Mr. Justice

the [REDACTED] day of [REDACTED], 19 [REDACTED]  
*(Date of pronouncing judgment.)*  
 Between Plaintiff  
 and Defendant.

1. This action coming on for trial this day (or on the [REDACTED] day of [REDACTED]). at the sittings helden at [REDACTED] for trial of actions without a jury (or at the sittings helden for the trial of actions with a jury at [REDACTED]) in presence of counsel for all parties [or if some of the parties do not appear for the plaintiff and the defendant, C.D., no one appearing for the defendants, E.F. and G.H. although they were duly served with notice of the trial as by the affidavit of service of notice of trial appears, or as may be] upon hearing read the pleadings and hearing the evidence adduced and what was alleged by counsel aforesaid. (If judgment was reserved add this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment.)

2. This Court doth order and adjudge as may be directed [or if any declaration is necessary, This Court doth declare (e.g., that the deed mentioned in the 4th and 5th paragraphs of the plaintiff's statement of claim is fraudulent and void as against the plaintiff and all other creditors of the defendant, X.Y., except the defendant, C.J., and doth order and adjudge the same accordingly.)]

3. And the Court doth further order and adjudge (add any special or appropriate direction or reference to Master or other officer).

4. If so And this Court doth reserve further directions and the question of costs until after the Master shall have made his report.

(Signature of officer settling judgment where not the same person as the officer signing judgments.)

Judgment signed the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.  
X.Y., Judgment Clerk.  
(or other officer signing judgments.)

No. 103.

*Judgment After Trial (No. 2)*

(Formal parts as in Form No. 102.)

2. This Court doth order and adjudge that the plaintiff do recover from the defendant (as may be directed).

3. And this Court doth further order and adjudge that the defendant do pay to the plaintiff his costs of this action forthwith after taxation thereof [or this Court doth order and adjudge that this action be and the same is hereby dismissed with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof].

No. 104.

*Form of Judgment Setting Aside Fraudulent Conveyance*

1. This Court doth declare that the deed or conveyance in the pleadings mentioned, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, and made by the defendant, A.B., to the defendant, C.D., of all and singular, etc., is fraudulent and void as against the plaintiff and other creditors of the defendant, A.B., and doth order and adjudge the same accordingly.

2. And this Court doth further order and adjudge that the plaintiff do recover from the defendants his costs of this action up to and inclusive of this judgment forthwith after taxation thereof.

3. And this Court doth further order and adjudge that the plaintiffs costs of this action as between solicitor and client over and above his party and party costs be taxed and such excess costs and so much of the party and party costs as may not be recovered under this judgment be paid out of the proceeds of the sale of the said lands and premises whether sold under execution or otherwise and that he do have a lien or charge for his said costs upon the said proceeds thereof in priority to all other creditors of the said A.B. other than mortgagees of the said lands whose mortgages existed prior to the commencement of this action.

No. 105.

*Judgment on Motion for Judgment (Court)*

1. Upon motion for judgment made this day unto this Court by counsel for the plaintiff (or as may be) and upon hearing read \_\_\_\_\_ and upon hearing counsel for the defendant (or as may be).

2. [Where necessary This Court doth declare, etc.]

3. [And] this Court doth order and adjudge, etc.

4. And this Court doth further order and adjudge, etc.

No. 106.

*Judgment Against a Married Woman*

**X** This Court doth order and adjudge that the plaintiff do recover against the defendant the sum of \$ to be levied out of the separate property of the said defendant which she is now or may hereafter be possessed of or entitled to, and any property which she may hereafter while discovert be possessed of, or entitled to and not otherwise; but this judgment shall not render available to satisfy the same any separate property which the defendant was or may be restrained from anticipating unless by reason of section 11 of *The Married Women's Property Act*, such property shall be available to satisfy the judgment notwithstanding such restriction.

No. 107.

*Judgment Against an Executor or Administrator*

This court doth order and adjudge that the plaintiff do recover against the defendant the sum of dollars and cents to be levied against the goods and chattels, lands and tenements, which were of the said *M. N. (the testator or intestate)* at the time of his death come or which shall hereafter come to the hands of the defendant to be administered if he hath so much thereof in his hands to be administered [and in proper cases] and if he hath not so much in his hands to be administered then to be levied of the proper goods and chattels, lands and tenements of the defendant] and this Court doth further order and adjudge that the plaintiff do recover against the defendant the further sum of dollars and cents costs taxed to be levied &c., as above.

No. 108.

## WRITS OF EXECUTION, &amp;c.

*Writ of Fieri Facias (Rule 533)*

Court and Cause.

Name and title of Sovereign.

To the Sheriff of , greeting:

We command you that of the goods and chattels and lands and tenements in your bailiwick of *C. D.* you cause to be made the sum of \$ and also interest thereon from the day of [day of the judgment or order, or day on which the money is directed to be paid, or day from which interest is directed by the order to run, as the case may be], which said sum of money and interest were by a judgment in this action bearing date the day of adjudged to be paid by the said *C. D.* to *A. B.*, and also the further sum of \$ for the taxed costs of the said *A. B.*, mentioned in the said judgment, together with interest at the rate of 5 per cent. per annum thereon from the day of (the date of the certificate of taxation) and that you have before our Justices of the Supreme Court of Ontario so much of that money as you shall have made from the said goods and chattels immediately after the execution hereof, and so much thereof as you shall have made from said lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof, to be paid to the said *A. B.* in pursuance of the said judgment [or order as the case may be]. And in what manner you shall have executed this our writ make appear to our Justices aforesaid immediately after the execution thereof. And have there then this writ.

Witness, the Honourable  
this day of 19 ,

Chief Justice of Ontario,

(Signature of Officer.)

Issued from the office of the

at

(Signature of Officer.)

*Indorsements*

The \_\_\_\_\_ is entitled to receive for this and other writs renewals of the same, the following sums  
 For this writ, \$6.  
 For 1st renewal,  
 For 2nd renewal,

(Signature of Officer.)

Etc., etc., (as may be necessary).

Levy \$ \_\_\_\_\_ and \$ \_\_\_\_\_ for costs of execution, etc., and also interest on \$ \_\_\_\_\_ at five per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_, until payment; besides sheriff's poundage, officer's fees, costs of levying, and all other legal incidental expenses.

(Signature of Plaintiff or of his Solicitor.)

SEE NOTES *Supra* as to Memoranda to be indorsed at the office of issue and of the solicitor's name and address.

No. 109.

*Fi. Fa. Against an Executor or Administrator on a Judgment de bonis testatoris et si non de bonis propriis as to the costs*

We command you that of the goods and chattels and lands and tenements in your bailiwick which were of *C. D.*, deceased, at the time of his death, in the hands of *E. F.*, executor of the last will and testament [or administrator of the estate and effects] of the said *C. D.* to be administered, you cause to be made the sum of \$ \_\_\_\_\_ and also interest at the rate of five per centum per annum, from the \_\_\_\_\_ day of 19\_\_\_\_\_, which said sum of money and interest were by a judgment of our said Court, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ in 19\_\_\_\_\_, adjudged to be paid by the said *E. F.* as executor (or administrator) as aforesaid to the said *C. D.* And further, that of the goods and chattels and lands and tenements in your bailiwick which were of *C. D.*, deceased, at the time of his death, in the hands of *E. F.* as executor (or administrator) as aforesaid to be administered, if the said *E. F.* has so much in his hands to be administered you further cause to be made the sum of \_\_\_\_\_ for the taxed costs of the said *A. B.* mentioned in the said judgment, together with interest thereon at the rate of 5 per centum per annum from the day of \_\_\_\_\_ 19\_\_\_\_\_, and that if he has not so much, then that you cause to be made of the proper goods and chattels and lands and tenements in your bailiwick of the said *E. F.* the said sum of \_\_\_\_\_, together with interest thereon as aforesaid, and that you have before, &c. (Conclude as in No. 108.)

NOTE.—Care must be exercised to follow the provisions of the judgment.

No. 110.

*Fieri Facias Against a Married Woman*

Modify the general form so as to make it follow the form of judgment.  
 (See Form 106.)

No. 111.

*Fieri Facias on a Judgment or Order for Costs*

We command you that of the goods and chattels and lands and tenements of \_\_\_\_\_ in your bailiwick you cause to be made the sum of \_\_\_\_\_ for certain costs which by [a judgment or an order] in this action dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_, were [adjudged or ordered] to be paid by the said \_\_\_\_\_ to \_\_\_\_\_ and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of five per centum per annum from the \_\_\_\_\_ day of 19\_\_\_\_\_, [the date of the certificate of taxation] and that you have before our justices of the Supreme Court of Ontario so much of the

said sum and interest as you shall have made from the said goods and chattels, immediately after the execution hereof, and so much thereof as you shall have made from the sail lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof, to be rendered to the said . And in what manner you shall have executed this our writ make appear to our said justices immediately after the execution hereof. And have there then this writ.

*Fieri Facias on Discontinuance or Otherwise Without a Judgment*

NOTE.—*When costs are payable on a discontinuance after the words "certain costs," proceed, "which are payable by the plaintiff to the defendant upon the discontinuance of this action and which have been taxed," etc. When costs are payable under Rule 660, proceed "which are payable as the costs of an abandoned motion," etc.*

No. 112.

*Fi. Fa. when Judgment Assigned and Order Obtained under Rule 566*

Greeting.

We command you that of the goods and chattels and lands and tenements of C. D. in your bailiwick, you cause to be made the sum of and also interest thereon, from the day of A.D. which said sum of money and interest were lately before the Justices of our Supreme Court of Ontario in a certain action wherein, A. B. was plaintiff and C. D. was defendant, by a judgment of our said Court bearing date the day of A.D. , adjudged to be paid by the said C. D. to the plaintiff, together with certain costs in the said judgment mentioned, and which costs have been taxed and allowed by the Taxing Officer of our said Court at the sum of \$ , together with interest thereon from the day of A.D. . And the said plaintiff having since the said judgment was recovered assigned the same and the full benefit thereof and the moneys thereby secured to X. Y. Z.

Whereupon on an application to the Master of the Supreme Court of Ontario the said Master by an Order dated the day of A.D. , ordered that the said X. Y. Z. should be at liberty to issue forthwith execution against the goods and lands of the defendant C. D. to recover the full amount of the said judgment with interest and costs.

Therefore we further command you that you have before our Justices aforesaid, at Toronto, so much of that money and interest as you shall have made from the said goods and chattels immediately after the execution hereof, and so much thereof as you shall have made from the sail lands and tenements, immediately after the expiration of twelve months from the day of your receipt hereof, to be paid to the said X. Y. Z. in pursuance of the said judgment and order.

And in what manner you shall have executed this our writ make appear to our Justices aforesaid, at Toronto, immediately after the execution thereof. And have there then this writ.

Witness, etc.

No. 112a.

*Writ of Venditioni Exponas After a Certificate or Return of Goods or Lands on Hand to Full Amount Unsold for Want of Buyers*

Whereas by our writ we lately commanded you that of the goods and chattels and lands and tenements in your bailiwick of C. D. [here recite the fieri facias]. And on the day of you [certified or returned] to our Justices that by virtue of the said writ you had taken goods and chattels [or lands and tenements] of the said C. D. to the value

of the money and interest aforesaid, which said goods and chattels [*or lands and tenements*] remained in your hands unsold for want of buyers, and that therefore you could not have that money before our Justices aforesaid, as you were thereby commanded. Therefore, we being desirous that the said *A. B.* should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels [*or lands and tenements*] of the said *C. D.*, so by you taken as aforesaid, and every part thereof, for the best price that can be obtained for the same, and have the money arising from such sale before our Justices aforesaid immediately after the execution hereof, to be paid to the said *A. B.* And have there then this writ.

No. 113.

### Ven. Ex. for Part, and Fi. Fa. Residue

Whereas, by our writ we lately commanded you that of the goods and chattels and lands and tenements of in your bailiwick you should cause to be made (*here recite the fieri facias*) and you on the day of certified [or returned] to our said Justices, that by virtue of the said writ you have taken [goods and chattels or lands and tenements] of the said to the value of , parcel of the said several sums of money and interest which [goods and chattels or lands and tenements] remained in your hands for want of buyers, and that therefore you could not have that money before our Justices aforesaid, as you were thereby commanded, and that the said had not any other or more [goods and chattels or lands and tenements] in your bailiwick whereof you could cause to be made the residue of the moneys and interest aforesaid, or any part thereof; therefore we, being desirous that the said should be satisfied the said sums of money and interest, command you that you expose to sale, and sell, or cause to be sold, the said [goods and chattels or lands and tenements] of the said so by you taken as aforesaid, for the best price that can be obtained for the same, and have the said sum of parcel of the moneys and interest aforesaid arising from such sale, and any further or other moneys which you may receive by virtue of this writ before our Justices aforesaid, immediately after the execution hereof, to be rendered unto the said

If the writ and not merely a certificate has been returned a f. fa. residue may be added to the writ of ven. ex. as follows:

And in what manner you shall have executed this our writ make appear to our Justices aforesaid at Toronto, immediately after the execution hereof, and have there then this writ.

No. 114.

### *Writ of Possession*

Whereas lately by a judgment in this action dated A. B. recovered [or E. F. was ordered to deliver to A. B.] possession of all and singular that with the appurtenances in your bailiwick. Therefore, we command you that you enter the same, and without delay cause the said A. B. to have possession of the said land and premises with the appurtenances, and that you defend and keep him and his assigns in peaceable and quiet possession when and as often as any interruption may or shall, from time to time, be given or offered to him or them or any of them. Witness etc.

[Where money or costs are also recoverable by the judgment, a writ of fieri facias may be combined with the writ of possession.]

## No. 115.

*Writ of Delivery (Rule 544)*

We command you that without delay you cause the following chattels, that is to say [here enumerate the chattels recovered by the judgment] to be returned to *A. B.*, which chattels the said *A. B.* by a judgment in this action dated , recovered against *C. D.* [or *C. D.* was ordered to deliver to the said *A. B.*].

## No. 116.

*Writ of Capias ad Satisfaciendum (R.S.O. Ch. 115, Sec. 27)*

Whereas (insert if necessary any recitals which under the order may be proper).

We command you that you take *C. D.* if he shall be found in your bailiwick, and him safely keep so that you have his body before our Justices of our Supreme Court of Ontario immediately after the execution hereof to satisfy the sum of \$ , which by a judgment in this action dated , was adjudged to be recovered by *A. B.* against the said *C. D.* with the further sum of \$ , for the taxed costs mentioned in the said judgment, and interest upon the said sums at the rate of 5 per centum per annum from the and respectively. And have you then there this writ. Witness, &c.

On a writ of *Capias* before judgment add this note:

N.B.—This writ is to be in force for two months from the date hereof and no longer.

## No. 117.

*Writ of Attachment for Contempt (Rule 545)*

We command you to attach *C. D.*, notwithstanding any right of place he is in, so as to have him before our Justices in our Supreme Court of Ontario, immediately after the receipt hereof, then and there to answer to Us, as well touching a contempt which he it is alleged hath committed against Us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, by reason of any liberty, and bring this writ with you. Witness, &c.

## No. 118.

*Writ of Sequestration (Rule 549)*

Whereas by a judgment in this action dated , it was ordered that the said *C. D.* should [pay into Court to the credit of the said action the sum of ; or as the case may be]. Know ye, therefore, that we have given, and by these presents do give to you full power and authority to enter upon all the lands, tenements and real estate whatsoever of the said *C. D.*, and to collect, receive and sequester in your hands, not only all the rents and profits of his said lands, tenements and real estate, but also all his goods, chattels and personal estates whatsoever; and therefore we command you, that you do at certain proper and convenient days and hours, go to and enter upon all the lands, tenements and real estates of the said *C. D.*, and that you do collect, take and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said *C. D.* shall [pay into Court, to the credit of the said action, the sum of \$ ; or, as the case may be], and clear his contempt, and our said Court make other order to the contrary. Witness, etc.

## No. 119.

*Writ of Assignment of Dower (Rule 543)*

Whereas it has been made to appear to us in an action in our Supreme Court of Ontario that *C. D.* is the owner of (*describe the lands*) out of which dower is claimed by *A. B.*, and it has been adjudged by the judgment of our said Court bearing date the      day of      A.D. 19      , that the said *A. B.* is entitled to her proper dower out of the said lands [and also to recover from the said *C. D.* the sum of      for damages for the detention of her dower].

We therefore command you that without delay you do deliver to the said *A. B.* seisin of her third part of the said lands with the appurtenances. To hold to her in severalty by metes and bounds and that you do proceed in the execution in that respect of this our writ according to the provisions of *The Dower Act*.

[*A. f. fa. for recovery of the damages and costs, if any, awarded by the judgment, may be combined with this writ.*]

## No. 120.

*Writ of Assignment of Dower Where the Right of Dower is Acquiesced in by the Owner of the Estate*

Whereas, *A. B.*, widow, who was the wife of *C. D.*, deceased, demands against *E. F.* the third part of (*here describe the estate in which dower is claimed as in other writs of assignments of dower*) as dower. And whereas the said *E. F.* acquiesces in the said claim and is willing to assign to the said *A. B.* her proper dower, but that the said *A. B.* and *E. F.* are not agreed as to the admeasurement thereof. We therefore command you that, without delay, you do deliver the said *A. B.* seisin of her third part of the said lands and tenements with the appurtenances. To hold to her in severalty by metes and bounds. And that you do proceed in the execution of this our writ, according to the provisions of *The Dower Act*.

Witness, etc.

## No. 121.

*Certificate in Lieu of Return of Writ as to Goods (Rule 572)*

A Writ of execution in this cause against the goods and chattels, lands and tenements of *C. D.*, the above-named defendant      (or as the case may be), to me directed, dated the      day of      19      , issued from      , is now in my hands.

I certify that I have this day indorsed on the above mentioned writ my return thereto as to goods and chattels as follows:—

(*Here insert the return as indorsed.*)

Dated, &c.

## No. 122.

*Notice of Appeal to a Divisional Court (Rule 491)**(Court and Cause)*

Take notice that the      appeals to a Divisional Court from the judgment (or order) pronounced by      on the      day of      of      19      , and asks that the said judgment may be revised and that judgment should be entered (*set out shortly what is desired*) (or *that a new trial may be had*) upon the following grounds. (State the grounds clearly but briefly).

Dated the      day of      19      .

Signed *A. B.*, Solicitor for the

To *C. D.*, Solicitor for the

No. 123.

*Order for Costs of an Abandoned Appeal (Rule 496)**(Court and Cause)*

The appeal of the \_\_\_\_\_ from the judgment pronounced in this cause on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_. Not having been prosecuted as required by the rules it has been struck from the list as abandoned. And it is now ordered that the said (appellant) shall pay to the (respondent) the costs of the said abandoned appeal to be taxed.

Dated, &amp;c.

Registrar

No. 124.

## PETITIONS OF RIGHT

*Petition*

In the Supreme Court of Ontario.

To the King's Most Excellent Majesty.

The humble petition of *A. B.* (*stating Christian name and surname*) of \_\_\_\_\_, [by his solicitor, *E. F.*, of \_\_\_\_\_], sheweth that (*stating with convenient certainty the facts entitling the suppliant to relief*). Your suppliant therefore humbly prays that, etc.

The suppliant proposes that the trial of this petition shall take place at the \_\_\_\_\_ of \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19

(Signed)

*A. B.*  
or *C. D.*, Counsel for *A. B.*  
or *E. F.*, Solicitor for *A. B.*

(*Stating the usual place of abode of the suppliant, and, if he has a solicitor, the place of business of such solicitor.*)

*Indorsement*

The suppliant prays for a plea or answer on behalf of His Majesty within twenty-eight days, or otherwise, that the petition may be taken as confessed.

No. 125.

*Notice to Appear to Petition*To *A. B.*

, You are hereby required to appear to the within petition in His Majesty's Supreme Court of Ontario within eight days, and to plead or answer thereto within fourteen days after the date of service hereof.

Take notice, that if you fail to appear or plead or answer in due time, the said petition may, as against you, be ordered to be taken as admitting the truth of the matters set up in the petition.

No. 126.

*Certificate of Judgment for Petitioner*

To the Honourable the Treasurer of Ontario,

In the matter of the petition of right of *A. B.*, in His Majesty's Supreme Court of Ontario.

I hereby certify that on the                    day of                    A.D. 19  
 it was by the said Court adjudged (or ordered) that the above-named  
 supplicant was entitled to, etc.

*Judge's signature.*

MISCELLANEOUS FORMS

No. 127.

*Certificate of Taxation*

I certify that pursuant to [the judgment or order herein dated or the  
 request of the Master in Ordinary or as may be] I have taxed the costs  
 of the                    at \$

No. 128.

*Mode of Marking Exhibits at the Trial (Rule 263)*

In the Supreme Court of Ontario.

*Smith vs. Jones*

This Exhibit the (property of                    ) is produced by the plaintiff  
 (or defendant as the case may be), this                    day of                    19

A. B.,  
*Registrar, Dep. Clerk, or Local Registrar.*

No. 129.

*Schedule of Exhibits (Rule 263)*

*In the Supreme Court of Ontario*

*Smith v. Jones*

List of exhibits put in at the trial of this action at the                    day  
 of                    19

At the trial of this action at                    , the                    day of                    , 19

Plaintiff's Exhibits

- (1) Patent.
- (2) Deed, Jones to Smith.
- (3) Bundle promissory notes (six in all).

Defendant's Exhibits

- (4) Records of proceedings at Lodge of A. O. U. W.
- (5) Will of Arthur Brown.

*(Signature of Officer.)*

No. 130.

*Form of Satisfaction Piece (Rule 532)*

Satisfaction is acknowledged of the judgment in an action in the Supreme  
 Court of Ontario wherein A. B. was plaintiff and C. D. and others were  
 defendants, whereby it was adjudged that the plaintiff should recover  
 against the said defendants the sum of \$                    for debt and the  
 further sum of \$                    for costs.

And the said *A. B.* doth hereby expressly nominate and appoint *M. N.* his solicitor to witness and attest their acknowledgment of satisfaction.

(Signed)

"*A. B.*"

the above-named plaintiff.

Signed by the said *A. B.* on the      day of      19      , in the presence of the said *M. N.* a solicitor of the Supreme Court of Judicature for Ontario.

And I the said *M. N.* hereby declare myself to be solicitor for the said *A. B.* expressly named by him and attending at his request to inform him of the nature and effect of this acknowledgment of satisfaction which I accordingly did before the same was executed by him. In testimony whereof I subscribe my name as such solicitor.

Signed "M.N."

At the foot or in the margin the Registrar shall note:

"This satisfaction piece has been noted and recorded in the margin of the entry of the judgment referred to this      day of      19      "

"X. Y."  
Registrar.

The Registrar shall also enter in the margin or at the foot of the judgment as entered in the book and on the original judgment if produced "Satisfaction acknowledged." See satisfaction piece filed this      day of      19      "X. Y."  
Registrar.

No. 131.

BONDS, ETC.

*Replevin Bond (Rules 362 and 363)*

Know all men by these presents, that we *A. B.* (*the plaintiff*) of *W. G.*, of      and *J. S.*, of      are jointly and severally held and firmly bound to *W.P.*, Esquire, Sheriff of the County of      , in the sum of      of lawful money of Canada, to be paid to the said Sheriff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made we bind ourselves, and each and every of us in the whole, our, and each and every of our heirs, executors and administrators, firmly by these presents.

Dated this      day of      , one thousand nine hundred

The condition of this obligation is such, that if the above bounden *A. B.* prosecute his action with effect and without delay against *C. D.* for the taking and unjustly detaining (*or unjustly detaining, as the case may be*) of his goods and chattels, to wit: (*here set forth the property distrained, taken or detained*), and do make a return of the said property, if a return thereof shall be adjudged, and also to pay such damages as the defendant shall sustain by the issuing of the order of replevin if the said *A. B.* fails to recover judgment in his said suit, and further do observe, keep and perform all rules and orders made by the Court in the said action [*where Rule 363 so requires add and do indemnify and save harmless the defendant from all loss and damage which he may sustain by reason of the seizure of the said goods and chattels (as the case may be) and of any deterioration of the same in the meantime in the event of their being returned and all costs and expenses which the defendant may incur, including reasonable costs not taxable between party and party]*], then this obligation shall be void, or else remain in full force and virtue.

Sealed and delivered

in the presence of

}

*Form of Assignment*

Know all men by these presents, that I, *W. P.*, Esquire, Sheriff of the County of \_\_\_\_\_, have at the request of the within named *C. D.*, the defendant in this cause, assigned over this Replevin Bond unto the said *C. D.*, pursuant to the Rules of the Supreme Court of Ontario in that behalf.

In witness whereof, I have hereunto set my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred and

Sealed and delivered }  
in the presence of }

No. 132.

*Verification of Return of Moneys Paid into C. C. or Surrogate Court (Rule 769)*

I hereby solemnly declare that the annexed statement is a full and true statement of the moneys paid into the Court (or Surrogate) Court of the County of \_\_\_\_\_, during the year 19\_\_\_\_\_, and that it correctly shows the state of the various accounts therein mentioned upon the thirty-first day of December last.

(Signature)

A. B.,  
Clerk, or Registrar.

Subscribed and declared before me at \_\_\_\_\_, this  
day of January, 19\_\_\_\_\_.

C. D.,  
Commissioner for taking affidavits or  
Justice of the Peace.

## TARIFF "A"

TARIFF OF FEES TO BE ALLOWED SOLICITORS IN THE SUPREME  
COURT AND UPON PROCEEDINGS UNDER ANY STATUTE  
BEFORE A JUDGE OF THE SUPREME COURT.

1. For institution of an action.....	\$25 00
In mortgage actions in which writ specially indorsed \$5.00 further.	
This item covers all costs except those of applications in Court or Chambers up to and including search for appearance.	
2. Defence.....	15 00
Where an Affidavit of Merits is filed to a specially indorsed writ \$5.00 further.	
This item covers the entry of appearance, but does not include any application in Court or Chambers.	
3. Pleadings.....	30 00
This item covers all pleadings, affidavits on production, jury notices, etc., etc. Where there is a counter-claim and the costs of claim and counter-claim are awarded to different parties this item and items 7 and 8 shall be apportioned by the taxing officer.	
4. Drawing and settling issues and stated cases... Subject to increase to.....	5 00 25 00
5. Third party notice or summons to party added by counter-claim.....	10 00
6. Record and entry for trial.....	5 00
7. Preparation for trial, including notice of trial, notices to produce and admit, subpoenas, and advising upon evidence..... Subject to increase in the discretion of the Taxing Officer at Toronto to \$50, and in cases of a difficult nature involving large amounts or values to \$100.00.	30 00
8. Briefs at trial, per folio.....	10
9. Upon <i>ex-parte</i> motions in Chambers, including affidavits, etc.....	15 00

10. Upon contested interlocutory Chambers motions Subject to increase in the discretion of the Taxing Officer at Toronto, to a sum not exceeding \$40. (The Judge or Officer hearing the motion may fix any smaller sum.)	\$25 00
11. <i>Ex-parte</i> motions in Court.....	25 00
12. Contested interlocutory motions in Court..... Subject to increase by the Taxing Officer to \$50. (The Court may fix any smaller sum). Upon motions where questions of special import- ance and difficulty are involved and matters of substance are determined such as appeals from a Master's report or from a Surrogate Court or from an award of arbitrators or injunction or other motions when the rights of the litigants are determined an increased fee may be allowed by the Taxing Officer at Toronto.	30 00
13. Examinations, preliminary attendances, arrang- ing to cover all charges except Counsel fee: To the party examining..... To the party examined.....	5 00 2 00
Counsel fee on examination: To the party examining..... To the party examined.....	10 00 5 00
Counsel fee subject to increase in the discretion of the Senior Taxing Officer at Toronto in special cases. (See also Rule 654).	
14. Counsel fee at trial, to..... An increased Counsel fee and fee to junior counsel may be allowed in the discretion of the Taxing Officer at Toronto.	50 00
15. Solicitor attending trial where no second counsel employed..... If the trial lasts more than one day, then for each additional day, \$20.	25 00
16. Judgment, including attendance to hear judg- ment, drafting minutes, settlement and issue of the same, taxation of costs, etc.: To the party having the carriage of the order... To other parties..... Subject to increase to \$20.	10 00 5 00
17. Correspondence pending suit, \$5.00, subject to increase in the discretion of the Taxing Officer, up to.....	15 00

18. On originating motion in Court, to the party moving, to cover all preliminary proceedings, notices, affidavits, services, etc. ....	\$20 00
Subject to increase to \$50.	
In Chambers.....	15 00
Subject to increase to \$35.	
To a party appearing, for preliminary proceedings.....	10 00
Subject to increase when affidavits necessary to \$40 when motion in court; and to \$30 when motion in Chambers.	
Counsel fee in the discretion of the Taxing Officer at Toronto.	
Issuing order, etc., to the party having carriage.	15 00
To other parties.....	5 00
This item shall apply to all applications under the provisions of any statute.	
19. Upon motions and originating notices for copies of affidavits properly served on opposite parties per folio.....	10
20. Fair copy of material correspondence in chronological order, for use of the trial Judge, when proper, per folio. ....	10
Solicitor's attendances arranging for its admission by opposite party. ....	.5 00
Subject to increase to \$10.00.	
21. Upon appeals to the Appellate Division.	
Preliminary proceedings.	
To party appealing.....	25 00
To reespcrccrt.....	15 00
For the five copies of the pleadings, Exhibits, etc., furnished for the Judges, per folio of one copy, 20c.	
For Statement of Points of Law and of fact intended to be argued, \$5.00. Subject to increase by Taxing Officer at Toronto to \$25.00. Counsel fees in the discretion of the Taxing Officer at Toronto—	
Issuing judgment or order, etc., etc.:	
To party having carriage.....	12 00
To the other party.....	6 00
This item shall apply to appeals from the Ontario Railway and Municipal Board.	

## 22. References:

Attending on reference, per hour.....	\$3 00
To be increased in the discretion of the Taxing Officer at Toronto to \$7.50 per hour, or a lump fee may be allowed for the whole reference.	
Drawing notices, affidavits and other documents necessary upon the reference, per folio.....	20
For each copy, per folio.....	10
For every ordinary attendance.....	50
Fee conducting sale.....	10 00
Correspondence pending reference up to...	5 00

23. Signing default judgment including computations in mortgage actions..... 5 00

24. Commissions, in addition to costs of motion.... Reasonable fee to counsel and foreign agents attending execution of commission, not exceeding \$25 in the discretion of the Taxing Officer, or to be increased in the discretion of the Taxing Officer at Toronto.

25. Writs of execution, including disbursements.... 6 00  
Renewals, including disbursements..... 4 00

26. On application to Taxing Officer at Toronto for increased counsel fees and upon the taxation of the costs of abandoned motions and appeals, or upon taxations where an action is discontinued or money paid into Court is accepted ..... 5.00

NOTE.—The Court or the Judge or officer hearing any motion may allow a smaller fee than above provided.

**TARIFF OF FEES TO BE ALLOWED SOLICITORS IN COUNTY COURTS AND UPON PROCEEDINGS UNDER ANY STATUTE TAKEN BEFORE THE JUDGE OF THE COUNTY COURT OR BEFORE ANY JUDICIAL OFFICER OTHER THAN A JUDGE OF THE SUPREME COURT.**

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1. For the institution of an action..... \$15 00  
This item covers all costs except those of application in Court or Chambers up to and including search for appearance.

2. Defence.....	\$10 00	
	This item covers the entry of appearance, and where necessary the affidavit of merits, but does not include any application in Court or Chambers.	
3. Pleadings.....	15 00	
	This item covers all pleadings, affidavits on production, jury notices, etc., etc.	
4. Third party notice or summons to party added by counterclaim.....	5 00	
5. Record and entry for trial.....	3 00	
6. Preparation for trial, including notice of trial, notices to produce and admit subpoenas and advising on evidence.....	10 00	
	Subject to increase in the discretion of the Judge, in cases involving more than \$200 to...	
	25 00	
7. Brief at trial, per folio (not to exceed \$5.00) ...	10	
8. Upon <i>ex-parte</i> motion in Chambers including affidavits.....	5 00	
9. Upon contested interlocutory Chambers motion Subject to increase in the discretion of the Judge to a sum not exceeding.....	10 00	
	(The Judge may fix any smaller sum.)	
	15 00	
10. On <i>ex-parte</i> motions in Court.....	10 00	
11. On contested interlocutory motions in Court... Subject to increase in the discretion of the Judge to a sum not exceeding.....	15 00	
	(The Judge may fix any smaller sum.)	
	30 00	
12. Examinations:		
	Preliminary attendances arranging for examinations, to cover all attendances except the counsel fee:	
	To the party examining.....	3 00
	To the party examined.....	1 00
	Counsel fee on examination:	
	To the party examining.....	5 00
	To the party examined.....	3 00
	Subject to increase in cases involving over \$200, in the discretion of the Judge to a sum not exceeding.....	10 00

13. Counsel fee at trial, up to.....	\$25 00
Subject to an increase in the discretion of the Judge, in cases involving \$200 or more, to a sum not exceeding.....	50 00
And in cases involving \$400 or more to a sum not exceeding.....	70 00
(In cases where the claim is not a money demand the Judge shall determine the amount involved.)	
14. Solicitor attending in Court when not counsel or partner of counsel, in cases involving over \$200.....	15 00
15. Judgment:	
To party having carriage.....	5 00
To other parties.....	3 00
This includes attendance to hear judgment, drawing and settling same, taxation of costs, etc.	
16. Correspondence not exceeding.....	5 00
17. On originating notices in Court:	
To party moving for preliminary proceedings, affidavits, notices, etc.....	15 00
Subject to increase to, not exceeding.....	25 00
To party appearing for preliminary proceedings.....	5 00
Subject to increase when affidavits necessary to.....	15 00
Allowance for counsel fee in discretion of Judge, not exceeding.....	20 00
Issuing order to party having carriage.....	8 00
To other parties.....	3 00
18. Originating notices in Chambers:	
To party moving for preliminary proceeding.....	10 00
Subject to increase to.....	20 00
To party appearing.....	5 00
Subject to increase when affidavits necessary to.....	10 00
Counsel fee in discretion of Judge, not exceeding.....	15 00
Issuing order, to party having carriage.....	8 00
To other parties.....	3 00
19. Upon motions, copies of affidavits properly served on opposite party, per folio.....	10

20. Upon appeals to a Divisional Court of the Appellate Division:

Preliminary proceedings:

To party appealing.....	\$15 00
To the respondent.....	10 00
Counsel fee in discretion of Taxing Officer at Toronto, not exceeding.....	50 00
Issuing order, etc.:	
To party having carriage.....	8 00
To other parties.....	3 00
For the five copies of pleadings and exhibits &c., when prepared, 20c. per folio of one copy.	

In cases in which under *The County Courts Act* the costs in the County Court are allowed upon the Supreme Court scale, the costs of an appeal shall be taxed upon the Supreme Court scale.

In appeals from the Surrogate Court when the amount involved is large the Court may allow costs on the Supreme Court scale.

This item shall apply to all appeals under any statute save appeals from a Supreme Court Judge or the Ontario Railway and Municipal Board.

21. References:

Attending on reference, per hour.....	1 00
Subject to increase to.....	2 00
Drawing notices, affidavits and other documents necessary upon the reference, per folio.....	20
For each copy, per folio.....	10
For every ordinary attendance.....	50
For conducting sale.....	10 00
22. Signing default judgment.....	3 00
23. Commission (in addition to costs of motion)...	3 00
Attending on execution, foreign agents' fees, etc., in discretion of Judge.	
24. Writs of execution, including disbursements....	4 00
Renewals, including disbursements.....	3 00

When in an action in the County Court costs are awarded on the scale of the Supreme Court under the provisions of *The County Courts Act* the Taxing Officer at Toronto shall have the same power of allowing increased fees as in cases in the Supreme Court.

In the Counties of Carleton, Middlesex, Wentworth and York where a fee other than the Counsel fee at the trial may be increased by the Judge, the Clerk may allow the increase subject to an appeal to the Judge and upon such appeal the exercise of discretion by the Clerk shall be subject to review.

NOTE.—Unless otherwise specified the allowances in the above tariffs of solicitors' fees are exclusive of proper disbursements.

Upon taxation between a solicitor and his client, additional allowances may be made in the discretion of the officer taxing, but the exercise of such discretion shall be subject to review upon any appeal.

When for any reason the services covered by an item are not completed the fee may be apportioned by the taxing officer

## TARIFF "B"

### TARIFF OF DISBURSEMENTS

(Payable in stamps except where the officer is not paid by salary or has not commuted his fees or unless otherwise expressly authorized.)

On issue of writ.....	\$2 00
On entry of appearance.....	1 00
(Any number of defendants may appear at one time by the same solicitor without extra charge.)	
On every order except <i>praecipe</i> orders.....	1 00
On <i>praecipe</i> orders.....	50
On every judgment.....	2 00
(Including a certificate of the judgment of the Appellate Division.)	
Where a judgment or order is entered, per folio additional.....	10

(Where an order is required to be entered in more than one place—Rule 518—this fee shall be charged in the Local Office.)

On setting down any motion.....	50
On setting down an appeal to the Appellate Division	2 00
On entering an action for trial:	
With a Jury (including the fee payable under <i>The Jurors Act</i> ).....	6 00
Without a Jury.....	3 00
On certification of record.....	1 00

On every filing (except <i>praecipes</i> in the Accountant's Office).....	10
On any certificate.....	50
If over three folios, for every folio.....	20
On a direction to pay money into Court, or a cheque	30
(No stamp on cheques for less than \$10 or on directions to receive money paid on mortgages to the Accountant.)	
Search: When action less than two years old.....	10
When action more than two years old.....	30
When made by the Official Guardian, no charge	....
(No charge shall be made for inspection of the books of the Accountant's Office.)	
Amending pleadings.....	30
Writs, other than writs of summons.....	\$1 00
Taxations, party and party, including certificate of taxation.....	1 00
Taxations, solicitor and client, same fees as on a reference.	
Comparing and certifying papers prepared by a solicitor: for each three folios.....	10
Making and certifying copies: per folio.....	10
Making up and forwarding papers.....	50
On renewal of writs.....	1 00
On References:	
Appointments.....	50
Per hour while attending reference.....	1 50
Drawing report, per folio.....	20
Engrossing report.....	10
Fee (on first report in action only).....	2 00
Oath.....	20
Depositions in infancy matters (no charge to be made for time): per folio.....	20
On quieting titles:	
To Inspector (when petition referred to him); to cover all fees except filings.....	8 00
When petition referred to Referee, same fees as on a reference, and additional as follows:	
On each deed in the chain of title, other than satisfied mortgages....	50
Where title is possessory only.....	4 00
On certificate of title....	4 00

On examination before Special Examiner:	
Appointment.....	50
Oath.....	50
Taking depositions, per hour.....	\$2 00
Marking exhibits.....	20
Copy for solicitor, per folio.....	10
Return.....	50
Certificate.....	50
Attendance when examination not proceeded with unless 24 hours' previous notice given	1 00
Attendance out of office, extra per mile.....	20
 Crier:	
Calling case.....	60
Swearing witness or constable.....	20
 Deputy Registrar; not paid by salary, and entitled on 1st September, 1913; so long as present officers retain office and are not paid by salary.	
Payable in cash:	
Swearing each witness.....	20
Marking each exhibit.....	20
Attending inspection of documents pro- duced.....	1 00
 Commissioners. Payable in cash:	
Taking recognizance.....	50
Taking affidavits.....	20
Marking each exhibit.....	10
 Upon every commission appointing a commis- sioner to take affidavits, etc.....	5 00
 Upon every deed poll changing name.....	5 00
 When a stenographer is employed upon a reference the fee payable shall be as follows:	
(1) For services at the hearing each day on which actually employed, \$8.00.	
(2) For copies of evidence required for use upon the reference or on an appeal. Ten cents per folio of one copy for all copies required of any one trans- cription of shorthand notes not exceeding six copies altogether.	
(3) For any additional copies required: five cents per folio of each copy.	
(4) For single copies ordered, seven and a half cents per folio.	
(5) For reading evidence to the Master from notes when no copies are ordered at the rate of \$1.50 per hour, payable by the party having the conduct of the reference.	

Items 1 and 5 shall not be payable to stenographers employed at Osgoode Hall paid by salary.

Fees payable to witnesses, in both Supreme Court and County Court:

To witnesses residing within three miles of the Court House, per diem.....	\$1 00
To witnesses residing over three miles from the Court House, per diem.....	1 50
Barristers and solicitors, physicians and surgeons, other than parties to the cause, when called upon to give evidence in consequence of any professional service rendered by them, or to give professional opinions, per diem, unless otherwise provided by statute.....	5 00
Engineers, surveyors and architects, other than parties to the cause, when called upon to give evidence of any professional service rendered by them or to give evidence depending upon their skill or judgment, per diem, unless otherwise provided by statute.....	5 00

If witnesses attend in one case only, they will be entitled to the full allowance. If they attend in more than one case they will be entitled to a proportionate part in each cause only.

The travelling expenses of witnesses, over three miles, shall be allowed, according to the sums reasonably and actually paid, but in no case shall exceed twenty cents per mile, one way.

An allowance may be made to an interpreter not exceeding the fee payable to a professional witness.

A reasonable sum may be allowed for the preparation of any plan, model or photograph, when necessary for the due understanding of the evidence.

#### FEES PAYABLE TO COUNTY COURT CLERKS

1. Upon issue of Writ (in lieu of all fees heretofore payable by a plaintiff prior to Entry for trial or assessment, except those provided for by item 5) 3 00
2. Upon Entry of Appearance (in lieu of all fees heretofore paid by a Defendant, or third party, prior to entry of action for Trial or Assessment, except those provided for by item 5).....  
(Any number of persons may appear at the same time by the same solicitor without extra charge.) 1 00

3. Upon Entry of action or issue for Trial or Assessment:	
Non-jury case.....	\$3 00
Jury case, including the fee payable under <i>The Jurors Act</i> .....	5 00
4. Upon Entry of Judgment (including Taxation of Costs).....	3 00
5. Upon Examinations and References:	
Appointment.....	50
Not exceeding one hour.....	1 50
Additional per hour after first.....	1 00
Marking exhibits, each.....	20
Copies of depositions per folio.....	10
For each oath.....	20
For each certificate.....	50
Drawing reports per folio.....	20
Engrossing reports per folio.....	10
6. On every writ of execution and renewal.....	1 00
7. Every certificate not otherwise provided for....	50
8. Exemplification of judgment (including certificate and seal).....	1 50
9. Every search not made in the ordinary course of an action, or made after the close of the action, if within three years.....	10
If made after that time.....	30
For copies of papers, per folio.....	10
10. On appeal from County Court to High Court (including making up and forwarding papers, preparing certificate and entry of judgment of Appellate Court).....	2 00
Disbursements for express or postage to be added.	
11. For every subpoena in matters outside of actions such as in Municipal and Voters' List proceedings, etc., and all other proceedings in which a subpoena is issuable out of the County Court...	1 00
12. On all applications and proceedings before a County Court Judge, other than application in an action, not otherwise provided for, and upon all applications in an action after judgment Where there is a trial or hearing upon oral evidence in any matter other than an action or issue, a further fee of.....	1 00
	2 00

## TARIFF "C"

## FEES OF SHERIFFS

		Su- preme Court	County Court
1. Service on one party of any writ, subpoena, notice, pleading, or other paper, including receiving, filing, return, affidavit of service and one letter (exclusive of mileage); when more than one paper served at the same time it shall be considered as one service.....	\$3 00	\$2 00	
2. Each additional party served.....	75	50	
3. When writ returned without service being made.....	1 00	75	
4. On writs of <i>Fieri Facias</i> and <i>Ven. Ex</i> and renewals thereof covering receiving, filing warrant and return and one letter (payable in advance; see R.S.O. 1927, c. 18, sec. 30). .....	2 00	1 50	
5. Transmitting copy of execution to Master of Titles (R.S.O. 1927, c. 158, sec. 62).....	1 00	50	
6. Executing each order or writ relating to Arrest, Attachment, Absconding Debtor, Replevin, Sequestration, Possession, Hab. Fac. Pos., Escheat and Striking a Special Jury, and including receiving, filing return, preparing warrant, precept, bond and affidavits when necessary and other necessary attendances and including correspondence (exclusive of mileage, of poundage when chargeable, and of reasonable and necessary actual disbursements) .....	12 00	8 00	
7. Poundage on executions and on attachments on the sum made; up to and including \$1,000, 6%; excess over \$1,000 and up to and including \$4,000, 3%; and on excess over \$4,000, 1½%. In County Court cases 5% on the sum made. (Exclusive of mileage and of all reasonable and necessary actual disbursements.) .....	.....	.....	
8. Schedule made on the execution of any process, including copy for the debtor not exceeding 5 folios.....	1 50	1 00	
9. Each folio above 5.....	20	20	
10. Drawing advertisement and copies, including transmitting and posting....	2 00	1 00	
11. Every notice of sale or postponement thereof.....	25	25	

12. For each day's attendance upon a view by a Jury (exclusive of mileage and reasonable and necessary disbursements).....	\$ 5 00	\$ 3 00
13. Mileage from the Court House to the place where a paper is served, writ executed or other service performed (one way except in the case of an arrest, when mileage is both ways) per mile payable in advance (see R.S.O. 1927, c. 18, sec. 30).....	15	15
14. Every letter not above provided for and required by a party or his solicitor	50	30
15. Bringing up prisoner on attachment or Habeas Corpus besides travel at 20 cents per mile.....	2 00	1 50
16. Certificate of surrender by sureties....	1 00	1 00
17. Where a Sheriff is directed by the Court to perform any service or do any act for which no fee is provided, he may be allowed such fee as the Court may think fit, and it shall be payable as the Court may direct (R.S.O. 1927, c. 18, sec. 29) .....	....	....
18. Every search for writs against one debtor not being by a party to a cause or his solicitor.....	30	30
19. When search embodied in a certificate including mailing to solicitor..... (It shall include any sales during the six months preceding its date.)	1 00	1 00
20. Maximum fee for a land certificate relating to the investigation of one title and in which shall be included all names required (R.S.O. 1927, c. 18, sec. 20) .....	4 00	4 00
21. On Trials.....	1 00	1 00
22. For notices, etc., upon seizure of stock, mortgages, and patents, additional....	2 00	1 50
23. For Sheriff's deed or bill of sale.....	4 00	3 00
24. For schedule of distribution under <i>Creditors Relief Act</i> .....	2 00	1 00

## TARIFF "D"

## TARIFF OF FEES FOR WORK DONE IN ONTARIO UPON PRIVY COUNCIL APPEALS (IN ADDITION TO DISBURSEMENTS)

Giving security and obtaining its allowance.....	\$ 20 00
To respondent on allowance of security.....	10 00
Settling record.....	20 00

Supervising printing, etc., per folio:	
To the Appellant.....	20
To the Respondent.....	10
Transmission of record, etc.....	\$5 00
Fees, drawing and settling case.....	50 00
(Subject to increase in discretion of taxing officer in Toronto.)	
Correspondence, etc.....	10 00
Entry of certificate and taxation of costs.....	10 00

NOTE.—Tariffs A and D shall be used in all taxations after these Rules come in force.

### TARIFF "E"

#### COSTS ALLOWED ON SALES, LEASES AND MORTGAGES OF LAND UNDER THE DEVOLUTION OF ESTATES ACT

*(a) To the Solicitor for the Personal Representative.*

1. Where sale price or amount of mortgage is under \$200,  
\$10.

Where it is over \$200, up to and including \$400, \$12.

Where it is over \$400, up to and including \$600, \$15.

Where it is over \$600, up to and including \$800, \$20.

Where it is over \$800, up to and including \$1,000, \$25.

Where it is over \$1,000, up to and including \$1,500,  
 $2\frac{1}{2}\%$ .

Where it is over \$1,500, up to and including \$2,000, \$7  
plus  $2\frac{1}{2}\%$ .

Where it is over \$2,000, up to and including \$3,000, \$17  
plus  $1\frac{1}{2}\%$ .

Where it is over \$3,000, up to and including \$5,000, \$32  
plus  $1\frac{1}{2}\%$ .

Where it is over \$5,000, \$57 plus  $\frac{1}{2}$  of 1%.

Where a part of the land of an estate has been sold, in the case of any subsequent sale three-fourths of the foregoing amount shall be allowed.

2. In addition to the above amounts there shall be allowed:

(a) The cost of taking out Letters of Administration or Letters Probate and of Succession Duty Affidavits as fixed by the Surrogate Court Rules, where there is no personal estate out of which such costs can be paid;

(b) The proper disbursements for advertising for creditors where there is no personal estate out of which such disbursements can be paid.

(c) Where the sale is by auction, the auctioneer's fee and the costs of all necessary printing of advertisements;

(d) The fees paid to valuators.

(b) *Costs of Official Guardian*

3. The costs of the Official Guardian shall be one-third of the amount allowed under item 1, and his actual disbursements.

(c) *Special Allowances*

When special circumstances render the amount taxable under this tariff unreasonable or inadequate, a Judge may order the allowance of a smaller or larger sum.

NOTE.—In applying this tariff to leases, the amount shall be deemed to be the annual rental multiplied by the number of years in the term.

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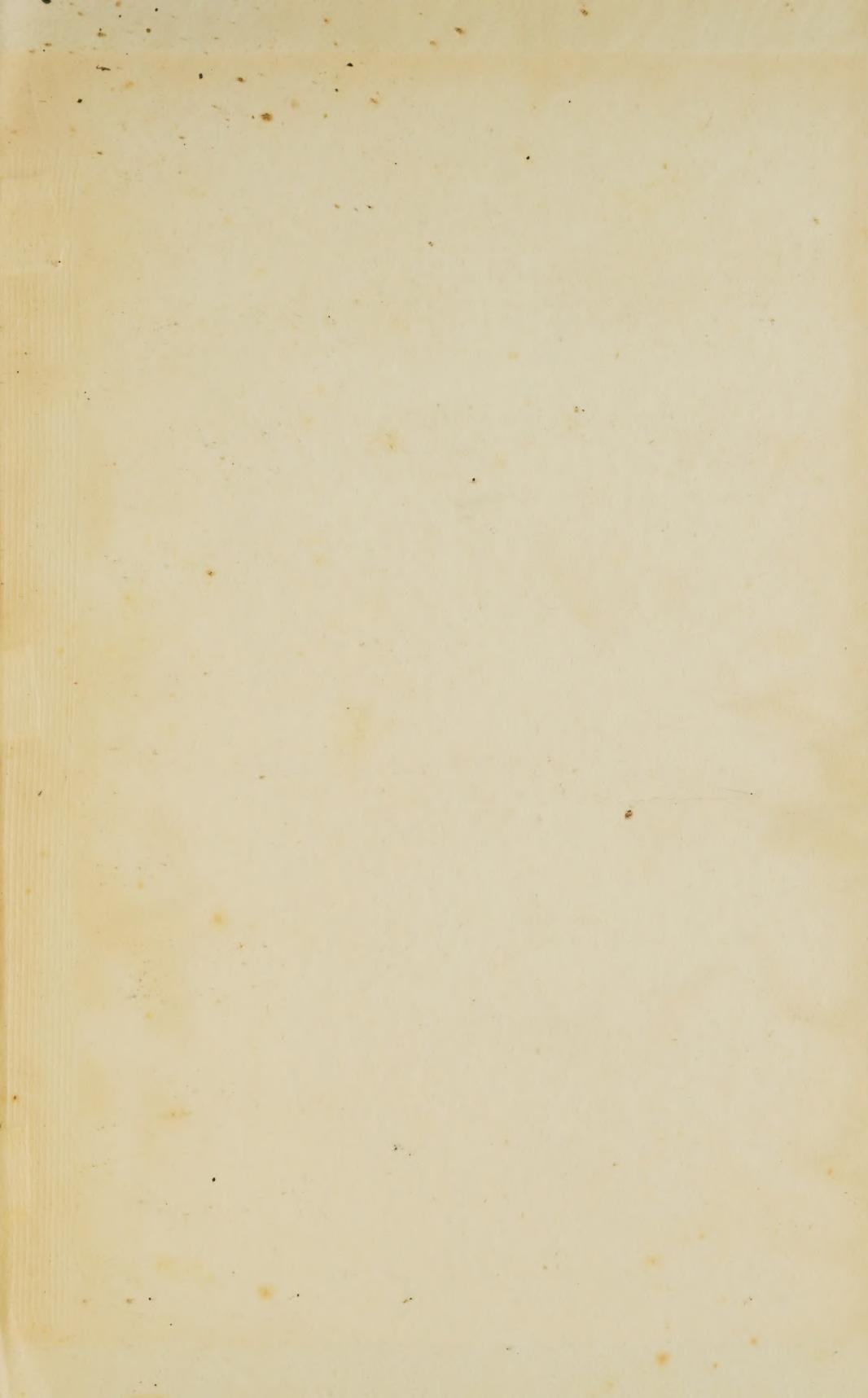
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